

Edmonton Subdivision and Development Appeal Board

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Date: August 20, 2015
Project Number: 172187428-001
File Number: SDAB-D-15-145

Notice of Decision

This appeal dated June 10, 2015, from the decision of the Development Authority for permission to:

Change the Use from a General Industrial Use to a Personal Service Shop operating as a Body Rub Centre

on Condo Common Area (Plan 1322403), located at 9601C - 41 Avenue NW and Plan 1322403 Unit 23, located at 4019 - 97 Street NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 9, 2015 and August 5, 2015. The decision of the Board was as follows:

July 9, 2015 Hearing:

Summary of Hearing:

At the outset of the appeal hearing, the Chairman confirmed with the parties in attendance that there was no opposition to the composition of the panel.

The appeal was filed on time, in accordance with s 688 of the *Municipal Government Act*, RSA 2000, c M-26 (“MGA”).

The Board heard an appeal of the decision of the Development Authority to approve, an application to change the Use from a General Industrial Use to a Personal Service Shop operating as a Body Rub Centre, subject to conditions, located at 9601C – 41 Avenue and 4019 – 97 Street NW. The subject Site is zoned IB Industrial Business Zone. The approved development permit application was subsequently appealed by an adjacent property owner.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A written submission received from the Sustainable Development on June 30, 2015.

The Board heard from Mr. and Mrs. Gilson, representing the Appellant, Sleep Easy CPAP Ltd., who made the following points:

1. They own a business next door to the proposed business.

2. The businesses are located in a business condominium which is part of the Condominium Corporation 1322403 (“Condo Board”).
3. The Condo Board was not aware of the proposed development until they received notification that the proposed development was approved.
4. Their business treats all ages from teenagers to elderly adults with sleep apnea.
5. They are concerned that the proposed business will be a safety issue for their clients, some of whom bring their children with them.
6. They also are concerned that this new business will affect their business and its resale value.
7. Their teenage children work at their business and some of the customers for the proposed business are also teenagers. The activities within the proposed business are not appropriate for their children and customers to see.
8. The condominium owners were not aware of the proposed development and are in opposition to the proposed change of Use.
9. Their business was previously located a few blocks away where there was also a Personal Service Shop nearby. Their clients witnessed people in the rear of the building with inappropriate attire and behavior.
10. The Condo Board would like the appeal hearing to be postponed for 90 days to retain legal counsel and hold an Annual General Meeting for the Condominium Owners.
11. They are also requesting a postponement so they can retain Legal Counsel.

In response to questions by the Board, Mr. and Mrs. Gilson provided the following information:

1. They provided the Board with a letter from the Condo Board, marked (“Exhibit A”).
2. They confirmed that they are requesting a postponement of the appeal hearing.

The Board heard from Mr. Hazlett, Legal Counsel for the Respondent, Cleopatra’s Spa, who made the following points:

1. The Appeal was filed 30 days ago which is adequate time to retain Legal Counsel.
2. He is opposed to the postponement request as it will have an effect on the proposed business; however, he understands the right to have Legal Counsel.

The Board went in camera to consider the tabling request of the Appellants.

Upon reconvening, the Chairman indicated that they considered the tabling request and agreed to table the appeal hearing to August 5, 2015.

Mr. Hazlett, Legal Counsel for the Appellant indicated that he was available on August 5, 2015.

The Appellants indicated that they will be on vacation on August 5 or 6, 2015. The Appellants left the room to discuss their options and upon reconvening, they stated that they are in agreement to table the appeal hearing to seek Legal Counsel.

Decision:

That the Appeal Hearing be TABLED TO AUGUST 5, 2015 to allow the Appellant to seek Legal Counsel. The Board advised the Appellant and the Respondent that the appeal hearing will proceed on August 5, 2015 in the event of any absences. The Respondent has the right to have the appeal heard in a timely manner as the appeal delays the proposed business.

Reasons for Decision:

The Board finds the following:

1. The Appeal Hearing is tabled to allow the Appellant time to seek Legal Counsel.

August 5, 2015 Hearing:

MOTION:

“that SDAB-D-15-145 be raised from the table.”

Summary of Hearing:

The Board heard from Mr. Noce, Legal Counsel for the Appellant, Mr. and Mrs. Gilson, representing, Sleep Easy CPAP Ltd., who made the following points:

1. He provided to the Board a copy of the Revised City of Edmonton, by-law No 13138 Business Licence Bylaw, marked (“Exhibit B”); excerpts of the Revised City of Edmonton, by-law No 12800, Edmonton Zoning Bylaw (“*Edmonton Zoning Bylaw*”), marked (“Exhibit C”); *SUMMARY OF Sleep Easy CPAP Ltd. August 2015 as presented by Roberto Noce, Q.C.*, marked (“Exhibit D”); and *Body Rub Centres Task Force Final Report and Recommendations April 2015* (“Task Force Report”), marked (“Exhibit E”).
2. He represents the Appellants, Mr. and Mrs. Gilson, Sleep Easy CPAP Ltd. (“Sleep Easy”), and the Condominium Corporation 1322403 (“Condo Board”).
3. The proposed development is a Discretionary Use in the IB Industrial Business Zone.
4. There are 26 business condominium units on the subject Site.
5. He provided the Board with background of the Sleep Easy business and the type of clientele that will access the business. He indicated that the clients are referred by doctors and testing is done on machines and then they meet with the clients to review the results.
6. The Appellant’s children, who are 15 and 17 years old, work at the business with them.
7. The hours of operation for the Sleep Easy are from 9:00 a.m. to 5:00 p.m.
8. On July 29, 2015, the Condo Board held an extraordinary Condo Board Meeting where 93 percent of the units were in opposition to the proposed development. A letter was previously submitted outlining their opposition.

9. At this meeting, the Condo Board passed a motion prohibiting a Body Rub Centre in the complex.
10. The Courts have previously upheld other condominium corporation bylaws, where only 75 percent was required for a Bylaw to be upheld.
11. In April, 2015 Council passed a moratorium on the issuance of new business permits for Body Rub Centres, until April 2016.
12. In his opinion, the Board should not approve a development permit for a use that will not be allowed to operate until after the moratorium period ends. Further, there could be other changes made to the by-law in 2016.
13. The Board should deny the proposed development and have the Applicant reapply after April 2016 once the new rules are in place.
14. There would be no hardship to the Respondent as City Council indicated that the Respondent can reapply after 6 months, and the decision of the SDAB will not be an issue. The decision for a Development Permit should not be related to any renovations being done or a lease being signed.
15. The Development Authority did not consider the test in Section 687(3)(d) of the *Municipal Government Act* states that in determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw.
16. Although no variances were granted, the Development Authority must exercise discretion.

The Chairman informed the parties that the Board is dealing with a development permit and not a business license.

1. The approved development permit is good for one year.
2. Although there is a petition from the Condo Board, the Board cannot deal with condominium bylaws.

In response to questions by the Board, Mr. Noce provided the following information:

1. In his opinion, Body Rub Centres are in a state of flux and changes to the neighbourhood should not put businesses or people at risk.
2. With regard to how the proposed Body Rub Centre will negatively affect the area, he stated that he did not have criminal statistics to confirm this.
3. There is no information in the Task Force Report regarding other businesses in the area.
4. If the proposed development is approved, additional security will be required after 6:00 p.m. when other businesses are closed.
5. There is a concern with regard to the health and safety in the community.
6. A letter was received from the owner of the subject Site in opposition to the proposed development.
7. There are businesses similar to the proposed development located in other areas that are zoned IB Industrial Business. However, in Mr. Noce's opinion, the proposed business is not appropriate in this IB Industrial Business Zone and should be located elsewhere.

The Board then heard from Ms. Milford, representing Sustainable Development, who made the following points:

1. She provided the Board with the process when evaluating the development permit application.
2. The proposed development was approved based on section 400, IB Industrial Business Zone of the *Edmonton Zoning Bylaw*.
3. She referred to Uses that are listed as Discretionary Uses in the IB Industrial Business Zone such as Indoor Participant Recreation Services, Commercial Schools, and Health Services to list a few.
4. She reviewed section 97 of the *Edmonton Zoning Bylaw* which is specific to Body Rub Centres.
5. The proposed development was circulated to the Edmonton Police Service Crime Prevention Through Environmental Design Unit (“EPS CPTED Unit”) and it was determined the proposed development is compatible with other businesses in the area.
6. There was a concern that there is no front access to the subject Site. She confirmed that the business would not use the rear entrance or rear parking. There is a front entrance and parking along the front. Parking related to this business would not disturb truck deliveries at the rear.
7. She confirmed that glazing into the public space of the business and exterior lighting will be provided.
8. She referred to the photographs submitted and confirmed that a new development permit would be required if the Respondent wanted a sign for the proposed business.
9. She confirmed that she reviewed section 54 of the *Edmonton Zoning Bylaw* regarding parking requirements and found that the proposed parking complies with the requirements of the *Edmonton Zoning Bylaw*.
10. She referred to the Task Force Report that confirmed City Council wanted to have these type of Uses geographically dispersed and felt that the proposed development 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.
11. She confirmed that the proposed development complies with the Edmonton Zoning Bylaw and received the approval of the EPS CPTED Unit.
12. The subject Site has been zoned IB Industrial Business Zone for several years and the condominium owners should have been aware that a Body Rub Centre was a Discretionary Use.
13. She confirmed that the proposed development was approved through the test of section 687(3)(d)(i)(A)-(B) that states in determining an appeal, the subdivision and development appeal board may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development would 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.

In response to questions by the Board, Ms. Milford provided the following information:

1. With regard to the Health Services component on the subject Site, she confirmed that Sleep Easy and one other business in the condominium have valid permits under the Health Services designation.
2. Extended Medical Treatment Services is not a Use described in the IB Industrial Business Zone; therefore, the minimum separation distance of 100 metres from a Body Rub Centre to an Extended Medical Treatment Services as set out in section 97 of the *Edmonton Zoning Bylaw* does not apply in this case.
3. The Uses that are subject to the minimum separation distance from a Body Rub Centre as stipulated in section 97 are exclusive and specific. The separation distance does not apply to related Use Classes.

The Board then heard from Mr. Newton, representing the Condo Board, who made the following points:

1. He owns five units in the business condominium.
2. He read his position letter to the Board, marked (“Exhibit F”) and stated he owns a welding and supply business, a lab and a chemical business.
3. He is the Vice President of the Condo Board and asked the Board to review the letter that was submitted at the previous hearing, marked “Exhibit A”.
4. In his opinion, the cost of business insurance will be increased because of after-hours use of the subject Site by this business.
5. The safety of pedestrians will have to be enforced.

In response to questions by the Board, Mr. Newton provided the following information:

1. There are 4 to 5 visits per week associated with his current businesses.
2. The lab business only has employees with no walk-in traffic.
3. The rear lane is intended for loading purposes only.
4. The businesses generally close at 5:00 p.m.

The Board then heard from Ms. Walker, who made the following points:

1. She purchased Unit 9 in June and may have reconsidered her decision if she was aware of the proposed development.
2. Her business is an amusement centre for adults and possibly children 12 years and older. Her business may operate in the evening and on weekends.
3. She does not want a Body Rub Centre to be located in the same location as her business.

The Board then heard from Mr. Shaikh, who made the following points:

1. He is a Board Member of the Islamic Family and Social Services Association (“IFSSA”).
2. The IFSSA has existed since 1992.

3. IFSSA provides youth programming and professional counselling within an Islamic context and also operates a food and clothing bank.
4. The IFSSA provides culturally sensitive counselling services.
5. The IFSSA works regularly with the Edmonton Mennonite Center of Newcomers, Catholic Social Services, Edmonton Public Schools, and other organizations.
6. He provided the Board with a letter outlining the IFSSA concerns, marked ("Exhibit G").
7. A Body Rub Centre being located in close proximity to the IFSSA will have a negative impact on their Association.
8. He is concerned that clients will stop using the IFSSA service if a Body Rub Centre exists in the area.
9. He is concerned that the IFSSA will have their reputation affected and community donations reduced with the existence of a Body Rub Centre in the area.
10. He is the Vice President of Colliers International: Commercial Real Estate Services. He understands that these are perceptions; however, in his opinion, the proposed development will decrease property values.
11. The hours of operation for the IFSSA are 9:00 a.m. to 4:00 p.m. during the week and 11:00 a.m. to 4:00 p.m. on weekends.
12. The IFSSA faces the interior of or the commercial complex across 97 Street between 39 Avenue and 41 Avenue.
13. There is no direct oversight to the front of the proposed development from the IFSSA site.

The Board heard from Mr. Hazlett, Legal Counsel for the Respondent, Cleopatra's Spa, who made the following points:

1. In his opinion, all of the presentations are based on opinion and not fact.
2. The proposed development is a Discretionary Use in the IB Industrial Business Zone.
3. In his opinion, no evidence was submitted that the proposed Body Rub Centre will unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land as outlined in section 687(3)(d)(i)(A)-(B) of the Edmonton Zoning Bylaw.
4. He confirmed that the Respondent has operated a similar Body Rub Centre in another location for 10 years with no issues with regard to safety and criminal activities.
5. The Respondent also does not intend to install a sign.
6. People driving by the subject Site will not know what the operation of the business is.
7. He confirmed that there is no access to the front of the building from the rear of the subject Site.

In response to questions by the Board, Mr. Hazlett provided the following information:

1. He does not believe the clientele of the Body Rub Centre is any different from clients accessing other businesses in the area.
2. As an additional precaution, cameras will be installed at the front door.
3. He referred to Page 11 of the Task Force Report that outlines the support of City Council.

4. With regard to the sensitivity of clients accessing the IFSSA, he stated that the proposed development is a Discretionary Use in the IB Industrial Business Zone.
5. The Respondent is concerned regarding safety and security of the area and complies with the Edmonton Zoning Bylaw with regards to lighting, cameras, etc.
6. With regard to the decrease in property value, he stated that despite Mr. Shaikh being a Real Estate agent, there was no evidence to support that the proposed development will negatively impact the property values.
7. He reiterated that the proposed development complies with the *MGA* and the *Edmonton Zoning Bylaw*.
8. With regard to the letter received from the Condo Board in opposition to the proposed development, he stated that there are several businesses in the complex that are not industrial related.

In rebuttal, Mr. Noce made the following points:

1. In his opinion, the presentation by Mr. Hazlett is only opinions and not facts.
2. The information regarding the negative impact on property value is impartial and supported by the opinion of a realtor.
3. All of the submissions made to the Subdivision and Development Appeal Board are opinions of those providing evidence and the Board has to decide what is real.
4. It is not appropriate to approve the proposed development in this location as this is a Discretionary Use.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS:

- 1) All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with sections 55(4) & (5).
- 2) No parking, loading, storage, trash collection, outdoor service or display areas shall be permitted within a required Yard and loading, storage, parking and trash collection areas shall be screened from view from any adjacent site and public roadway in accordance with section 54 of the Zoning Bylaw.
- 3) The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to section 54.6.
- 4) Bicycle parking shall be provided in accordance to section 54.3 and to the satisfaction of the Development Officer.
- 5) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices in accordance of section 51 of the Edmonton Zoning Bylaw.

- 6) The development shall comply to the regulations pertaining to Body Rub Centres in accordance with section 97 of the Edmonton Zoning Bylaw.

NOTES:

- 1) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
- 2) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 3) Signs require separate Development Applications. Signs placed on or within a Personal Service Shop Use Class operating as a Body Rub Centre shall comply with the applicable Sign Regulations contained in Section 59 of the Edmonton Zoning Bylaw and the applicable Sign Schedule for the Land Use Zone governing the Site on which the Body Rub Centre is located, except that Fascia Signs shall not: obstruct clear glazing required in subsection 97(3)(c) of this Bylaw; and obstruct clear glazing as required by the Land Use Zone governing the Site on which the Body Rub Centre is located (Ref. Section 97.4).
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.
- 5) A Building Permit is required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 6) This Development Permit is not a Business License. A separate application must be made for a Business License.

Reasons for Decision:

The Board finds the following:

1. The proposed development, a Personal Service Shop operating at a Body Rub Centre, is a Discretionary Use in the IB Industrial Business Zone.
2. The proposed development complies with all of the regulations of the *Edmonton Zoning Bylaw*.

3. Accordingly, the only issue the Board must deal with is whether or not the Discretionary Use should be allowed.
4. The Board recognizes that all proposed Uses can have some effect on neighbouring land Uses. However, the Board must determine whether or not the impact will unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land before denying a proposed development if it is a Discretionary Use.
5. The evidence before the Board regarding the incompatible nature of the Use is relatively undeveloped.
6. Concrete evidence was not submitted regarding the negative impact on neighbouring property values.
7. The Board heard the submission of the neighbouring Islamic Family and Social Services Association (IFSSA), that their Use may be incompatible with the proposed Use. While the Board takes all evidence into consideration, the weight of the evidence submitted leads the Board to find that there will not be a negative impact on surrounding businesses and Uses.
8. The Board finds that the IFSSA does not face 97 Street and cannot see the Body Rub Centre from their property, and as such, will not be unduly impacted by the proposed development.
9. Based on the evidence submitted, the proposed development received favorable reviews from the Edmonton Police Service's Crime Prevention Through Environmental Design Unit which is evidence that the impact of this Use will be mitigated by the design elements required by that program.
10. With regard to the issue of whether or not a business license can be obtained by the Respondent, at the present time this does not influence the Board's decision. This will be a different issue for the Respondent at a different time and before a different body.
11. Any signage will require a separate development permit application.
12. Based on the above, the Board finds that the proposed development 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.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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 Revised City of Edmonton, by-law No 12800, *Edmonton Zoning Bylaw*.
 5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under s 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 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.

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

CC:

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Date: August 20, 2015
Project Number: 169445911-001
File Number: SDAB-D-15-172

Notice of Decision

This appeal dated July 9, 2015, from the decision of the Development Authority for permission to:

Construct a Minor Digital On-premises Off-premises Sign (1733298 Alberta Ltd.)

on Plan 4269HW Blk 83 Lot 4, located at 5834 - Gateway Boulevard NW, was heard by the Subdivision and Development Appeal Board on August 5, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct a Minor Digital On-premises Off-premises Sign (1733298 Alberta Ltd.) located at 5834 Gateway Boulevard NW. The subject Site is zoned IH Heavy Industrial Zone.

The development permit application was refused because it was the opinion of the Development Authority that the proposed Minor Digital On-premises Off-premises Sign contradicts section 3.4(b)(ii) of the Calgary Trail Land Use Study and does not serve to enhance the built environment or contribute to or enhance the Gateway Boulevard major commercial corridor.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- A submission from the Development Officer, dated July 30.
- A submission from the Appellant, dated July 31.

The Board heard from Mr. Murphy, Legal Counsel for the Appellant, Outfront Media, who made the following points:

1. The current sign on the subject Site is a tri-vision sign that will be replaced with a Minor Digital On-premises Off-premises Sign.
2. The proposed sign will be located in an industrial area that has no sidewalks or nearby residential neighbourhoods.
3. The proposed sign complies with and exceeds all the regulations of the *Edmonton Zoning Bylaw*.
4. He reviewed a video of the Gateway Boulevard Corridor and the nature of the area where the sign is located (Exhibit "A").
5. The refused development permit was based upon the 1984 Calgary Trail Land Use Study ("CTLUS").
6. The Appellant applied for an On-premises Off-premises Sign so the land owner could have the option to advertise his own business and events.
7. A development permit was found from 1995 for an application to extend the use of the sign.
8. He referred to TAB 5 of his submission, a development permit from December, 2011 for *CBS Outdoor Canada*. The Appellant, now *Outfront Media*, made an application and received an approved permit for the tri-vision sign that is currently in place.
9. He demonstrated through a Google map that there are no residential areas in close proximity to the subject site. The areas surrounding the subject site are zoned IH Heavy Industrial Zone, CB1 Low Intensity Business Zone, and CB2 General Business Zone.
10. He referred to TAB 8 of his submission, photographs of the subject site, to show there are no yards in front of the businesses, no sidewalks, and is industrial in nature.
11. He stated that the Development Officer may refuse a permit that adversely impacts the built environment, under section 59.2(7) of the *Edmonton Zoning Bylaw*, but the Development Officer in her decision, changed the wording to "the Sign (billboard) does not serve to enhance the built environment..."
12. He stated the CTLUS is not a statutory plan under section 616(dd) of the *Municipal Government Act*. Under section 616(dd), "statutory plan" means an "intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4."
13. Section 636(1) of the *Municipal Government Act* states the following:
 - (a) While preparing a statutory plan a municipality must provide a means for any person who may be affected by it to make suggestions and representations,
 - (b) notify the public of the plan preparation process and of the means to make suggestions and representations referred to in clause (a),
 - (c) notify the school boards with jurisdiction in the area to which the plan preparation applies and provide opportunities to those authorities to make suggestions and representations,
 - (d) in the case of a municipal development plan, notify adjacent municipalities of the plan preparation and provide opportunities to those municipalities to make suggestions and representations, and

- (e) in the case of an area structure plan, where the land that is the subject of the plan is adjacent to another municipality, notify that municipality of the plan preparation and provide opportunities to that municipality to make suggestions and representations.
14. In Section 6.1(96) of the *Edmonton Zoning Bylaw*, Statutory Plan means “for the purpose of this Bylaw only, any plan defined as a Statutory Plan by the Municipal Government Act, or any planning policy document approved by City Council by resolution having specific impact on a defined geographic area such as a neighbourhood.”
 15. The CTLUS was created in 1984 and outlined what City Council would like to see in the future in this area.
 16. The Strathcona Junction Area Redevelopment Plan, adopted by City Council in 2011, under Bylaw 15812, specifically states that there will be no billboards along that portion of the Gateway Boulevard.
 17. Section 3.4(b)(i) and (ii) of the CTLUS, states “Greater attention shall be given to improving the location, siting, Signage comprehensibility and design of signage in the corridor by promoting within the business community the voluntary replacement of older advertising signage discouraging the use of portable signs and free-standing billboards.”
 18. This is what the Appellant is applying to do and does not contribute to proliferation and unsightliness.
 19. In his opinion, the proposed Sign will improve the area and is just a replacement of the existing sign.
 20. In his opinion, one Sign will not harm or enhance the built environment in the area and will improve the look of the area.
 21. According to a City Council document (Exhibit “B”), sign proliferation is controlled by restricting digital signs to commercial and industrial zones, and establishing appropriate separation distances between digital signs.
 22. Under Bylaw 15892, City Council found a way to ensure a control measure on digital signs in that they provided a limited life span of five years for the permits.
 23. He referred to TAB 9 of his submission; an email from Transportation Services that indicated that they did not have any concerns with the proposed sign.

In response to questions by the Board, Mr. Murphy provided the following information:

1. He confirmed that the existing sign and proposed sign will be the same size and in the same location on the subject Site.
2. The difference between the signs is that the proposed sign will have a side pole holding up the sign as opposed to a centre pole like the existing sign.

The Board then heard from Ms. Labonte, who was accompanied by Mr. Luke, representing the City of Edmonton Sustainable Development Department, who together made the following points:

1. They acknowledged that the proposed application is for a Minor Digital On-premises Off-premises Sign and there is an error on the permit refusal calling it a Major Digital Sign.

2. When making her decision, she reviewed the CTLUS. The intent of the CTLUS is to reduce the number of billboard signs.
3. The intent of the CTLUS describes the corridor as being a place where Edmonton greets visitors.
4. An e-mail was submitted, (Exhibit "D"), to show the intent of the CTLUS from the authors of the plan.
5. They referenced an aerial photo, (Exhibit "C") to show that Signage is an issue in this area.
6. In the *Edmonton Zoning Bylaw*, the Development Authority may refuse a sign if it affects the Built Environment.
7. In her opinion, the proposed Sign will negatively affect the Built Environment will block buildings along the corridor.
8. They are considering another development permit application that has been refused and will add to the proliferation of signs. The CTLUS prohibits Digital Signs on major routes.
9. They presented the Board with a video (Exhibit "E"), showing 10 signs located between 56 Avenue and 63 Avenue and there is one additional sign that is applying for a development permit.
10. With regard to the proposed sign, this is a new sign as the existing sign has a permit until October, 2016.

In response to questions by the Board, Ms. Labonte and Mr. Luke provided the following information:

1. The proliferation applies to all signs; however, the CTLUS and additional policies come into play when considering the development permit.
2. They agreed that the land use policies of the *Municipal Government Act* are policies by the Lieutenant Governor in Council under Division 2 and are not City policies.
3. The Board, while not being bound by the CTLUS, should still consider City Council's goals.
4. Mr. Luke was asked if he was involved in passing the resolution, he stated that he was not directly involved and at the time of the CTLUS, but there were open houses and a meeting with the business owners that were involved with public involvement.
5. They do not refuse development permits lightly and want to implement the goals of the CTLUS.
6. With regard to the CTLUS being a guideline or a guideline of future plans, they stated that this is a Discretionary Use so the Study gives the direction of the Development Authority and City Administration to consider it a relative document.
7. With regard to the proposed sign being incompatible, they stated that adding massing upon massing of general advertising on the corridor will have a negative impact in the area.

The Board Officer confirmed with the parties that the SDAB office required copies of the video and the exhibits following the hearing.

In rebuttal, Mr. Murphy made the following points:

1. The proposed sign is not “massing” advertising; they are just replacing an old sign with a new sign.
2. In his opinion, it should be within the Development Authority’s purview to consider if extra advertisements should be allowed on the new sign.
3. The proposed Sign is under strict control measures as outlined in the Sign regulations.
4. In his opinion, the Development Authority must abide by the Statutory Plan requirements and there are none in the CTLUS.
5. The CTLUS states that the land owner voluntarily “will replace their old sign for new advertising signs.”
6. The e-mail from the Development Authority is not applicable and the language regarding Digital Signs is not open to their interpretation.
7. City Council has not said specifically that there are to be no Digital Signs in the area.
8. If a development permit is granted, it is only for a five year period unless City Council changes the rules.
9. The proposed Sign is a Discretionary Use in the IH Heavy Industrial Zone and complies with the regulations of the *Edmonton Zoning Bylaw*.

Decision:

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 CONDITION:

The permit for this Sign shall expire on August 20, 2020.

Reasons for Decision:

The Board finds the following:

1. The proposed development, a Minor Digital On-premises Off-premises Sign, is a Discretionary Use in the IH Heavy Industrial Zone.
2. The Development Authority confirmed that the proposed Sign complies with all of the regulations of the *Edmonton Zoning Bylaw* with the exception of Section 59.2(7) that states:

For all Sign Applications for Major Digital Sign, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs, the Development Officer shall review the application in context with the surrounding development, such as (but not limited to): the architectural theme of the area; any historic designations; the requirements of any Statutory Plan; any streetscape improvements; proximity to residential development; driver decision points; and traffic conflict points.

The Development Officer may require application revisions to mitigate the impact of a proposed Sign, and may refuse a permit that adversely impacts the built environment.

3. The subject Site is not subject to any Area Structure Plan, any Area Redevelopment Plan, or any *Edmonton Zoning Bylaw* Overlay. The only Statutory Plan that affects this site is the Municipal Development Plan, "*The Way We Grow*".
4. The issue before the Board is the impact of the Calgary Trail Land Use Study ("CTLUS") which was approved by a resolution of City Council on September 11, 1984.
5. The Development Authority cited Section 3.4(b) of the CTLUS that states:

Greater attention shall be given to improving the location, siting, Signage comprehensibility and design of signage in the corridor by:

- i) promoting within the business community the voluntary replacement of older advertising signage;
 - ii) discouraging the use of portable signs and free-standing billboards; and improving directional signage to major facilities such as hospitals, University, Downtown, and Government Centre.
6. The Board accepts the submission of Legal Counsel for the Appellant, that the Board is not bound by this document.
 7. Section 687(3)(a.1) of the *Municipal Government Act* states that "in determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect."
 8. Both the *land use policies* and *statutory plans* are defined in the *Municipal Government Act*.
 9. It is clear that the CTLUS is not a land use policy in the *Municipal Government Act*.
 10. Statutory Plans are defined in section 616(dd) to mean "an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4".
 11. Division 4 of the *Municipal Government Act* sets out a detailed process by which a statutory plan must be passed which includes public hearings. Section 632(1), 633(1), 634(b) all state that a Statutory Plan must be passed by Bylaw.
 12. Accordingly, the CTLUS is not a statutory plan according to the *Municipal Government Act*.
 13. It is clear that the definition of Statutory Plan in the *Edmonton Zoning Bylaw* has its own meaning. However, in exercising its jurisdiction in section 687 of the *Municipal Government Act*, the Board is bound by the definition of statutory plan in the *Municipal Government Act*. It is not bound by the CTLUS.
 14. The Board then must consider whether or not this is an appropriate development for the area given regular planning principles and to ensure the development is compatible with the existing neighbourhood and land uses, and 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.
 15. The Board notes that the area along Gateway Boulevard between 56 and 63 Avenue is an area that it is heavily industrialized and populated by commercial and industrial buildings with basic and functional architecture.

16. This sign will not therefore, materially impact the surrounding area in a negative way.
17. This also ties in with section 59.2(7) of the *Edmonton Zoning Bylaw* which gives the Development Authority the ability to refuse a permit that adversely impacts the work environment.
18. This particular Sign, given the existing “architectural theme of the area” will not adversely impact this built environment.
19. Freestanding Digital Signs and other Freestanding Signs are characteristic of this area.
20. The proposed development complies with the separation distances laid out by City Council in Schedule 59G.3(6)(e) of the *Edmonton Zoning Bylaw*.
21. City Council has selected that separation distance to limit the density of signs and the proposed development complies with the limitations set out by City Council in the *Edmonton Zoning Bylaw*.
22. The development permit is valid for a five year period so that should the sign no longer fit in the architectural theme of the area, the Development Authority would be able to review the sign at the time of the permit renewal.
23. Based on the above, the Board finds that the proposed development 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.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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 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.

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

CC:

Edmonton Subdivision and Development Appeal Board

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Date: August 20, 2015
Project Number: 174331229-001
File Number: SDAB-D-15-173

Notice of Decision

This appeal dated July 8, 2015, from the decision of the Development Authority for permission to:

Operate a Major Home Based Business (office in the home for a law office, maximum 3 visits: 2 clients appointments and 1 courier per week day)

on Plan Q Blk 3 Lot 29, located at 9508 - 100A Street NW, was heard by the Subdivision and Development Appeal Board on August 5, 2015.

Summary of Hearing:

At the outset of the appeal hearing, the Chairman indicated that a voice message was received at the City of Edmonton Sustainable Development Department from the Respondent. Mr. Wen from the Sustainable Development Department, forwarded the voice message to the SDAB Administration.

The voice message was from Mr. Billingsley, the Respondent, stating that he was not able to get financing for the purchase of the subject Site and notified the Appellant, Robyn Harrison, that he would not be proceeding with the Major Home Based Business. He was asking for the development permit to be cancelled by Mr. Wen.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. A Major Home Based Business can only operate from a residence if it is occupied by the Respondent.

2. The Respondent indicated that he would not be purchasing the property and is no longer proceeding with the Major Home Based Business operation.

Important Information for Applicant/Appellant

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

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

CC: