



**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: August 18, 2017
Project Number: 232166360-001
File Number: SDAB-D-17-086

Notice of Decision

[1] On May 17, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 6, 2017. The appeal concerned the decision of the Development Authority, issued on March 22, 2017 to refuse the following development:

Install a Fascia Minor Digital Off-premises Sign (6.1 m x 3 m - facing North)

[2] The subject property is on Plan NB Blk 9 Lot 63, located at 9914 - 109 Street NW, within the CMU Commercial Mixed Use Zone. The Special Area Downtown Overlay and the Capital City Downtown Plan apply to the subject property.

[3] The following documents were received prior to the hearing and form part of the record:

- Copy of the refused permit, permit application and plans;
- Canada Post receipt confirming delivery of the refusal decision;
- Development Officer's written submissions dated May 11, 2017;
- Correspondence from City of Edmonton Transportation Planning and Engineering;
- Appellant's supporting materials, including PowerPoint presentation; and
- Three online responses in opposition to the development.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Proposed wording by Appellant with respect to a condition requiring the removal of a static Off-premises Sign located 85 metres from the proposed development;
- Exhibit B – Commercial properties available for lease around the subject Site;
- Exhibit C – Google Maps image of the static Off-premises Sign located 85 metres from the subject Site;
- Exhibit D – Diagram with measurements of the proposed Sign;
- Exhibit E – Google Maps image of the intersection at 109 Street and 100 Avenue;
- Exhibit F – Google Maps image of six-lane 109 Street;

- Exhibit G – Letter confirming removal of static Sign should the subject Sign be approved

May 17, 2017 Hearing

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [6] As the first hearing of the day ran late, the Development Officer requested to speak first, as he had a prior engagement scheduled for 12:30 p.m. He consented to the hearing proceeding in his absence after the completion of his submissions.
- [7] One neighbour in opposition to the development was in attendance, and he also indicated that he would like to speak first so that he could leave immediately afterward. He understood that by speaking first and leaving before the close of the hearing, he would not have the opportunity to hear the Appellant's submissions.
- [8] The Appellant expressed no opposition to this change in process.
- [9] The Board determined that the appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

a) *Position of the Development Authority*

- [10] The Development Authority was represented by Mr. S. Ahuja.
- [11] There is another Sign located 85 metres north of the proposed Sign. This other Sign is located on a Site that is owned by the same owner of the subject property. The owner has indicated a willingness to remove that other Sign if the subject Sign is approved. While this compromise may address the separation distance requirement, illumination from the subject Sign remains a factor.
- [12] Mr. Ahuja had the opportunity to review the Appellant's submissions and supporting materials. The examples of similar signs included in these materials relate to developments in industrial areas. By contrast, the proposed Sign will impact residential areas. The proposed development is a north-facing Fascia Sign, and since light does not simply emit in a straight line, the Development Authority is concerned with stray light illumination to the northeast and to the neighbouring residential area.

- [13] Should the Board grant this development, there is a condition that the Sign be de-energized at certain periods. This condition is to mitigate the impact of the Sign illumination at night, as the light fluctuation and flashing effect will be particularly impactful during this time, when residents return home to rest and sleep.
- [14] Based on the Appellant's materials, he understands that the proposed Sign will utilize new lighting technologies. However, the information provided is insufficient for him to accurately evaluate the potential impact upon surrounding properties. For example, Sign comparables were taken from Carolina and Toronto, which are not similar to Edmonton. Examples from the Sign manufacturer's website were taken from industrial areas and shopping mall complexes. Photographs from the Appellant's materials also show Sign examples located next to highways in industrial areas, whereas the proposed Sign will be located in a Commercial Mixed Use Zone. Finally, he questioned the technology's ability to completely eliminate light, which is what the Appellant appears to suggest.
- [15] Mr. Ahuja clarified that when reviewing the application, his review was based on the Applicant's request for a zero metre setback. He also drew attention to the size of the Sign which in combination with the potential illumination, will result in a greater negative impact.

b) *Position of Affected Property Owner in Opposition to the Development*

- [16] Mr. K. Masse of Keystone Capital Inc., 9233 – 96 Street, appeared in opposition to the development.
- [17] He owns the building west of the proposed development. His building is arguably the one that will be the most impacted by the subject Sign. Although the building is classified as a highrise, it is only three Storeys tall, and the entire east side of the building is covered in windows. Each of the windows is ten feet high, and the massive size of these windows required that they be installed using two separate pieces. If the Sign is approved, the illumination will have a drastic impact upon the tenants in his building.
- [18] The building is listed as a Class B Historical Building, which was one of the selling features for tenants. Six tenants located on the east side of the building will be impacted by illumination from the proposed Sign, and three others on the south side of the building will also face some aspect of illumination.
- [19] The development is located in Grandin, which is a walkable neighbourhood located near a major thoroughfare. As a result, the neighbourhood is characterized by a large residential area and a small pocket of commercial development. The entire neighbourhood should not be characterized as commercial simply due to this small pocket of commercial development. The impact upon residents should be taken into account. In the past, residents have experienced light from Digital Signs shining into their windows, which was not relaxing at night.

[20] In his view, if the proposed development consists of new technology with unknown impacts, the development should first be installed in a purely industrial commercial area for evaluation, rather than using a mixed residential area as a testing ground.

[21] Mr. Masse confirmed that he reviewed the information from the Appellant about the new lighting technology, and acknowledged that according to this information, his building should experience only 1% visibility of the Sign illumination. However, this information does not alleviate his concerns, as he doubts its reliability. He does not believe the technology will work. In particular, he doubts that there is a technology that can completely eliminate Sign illumination at one angle, whereas at another angle, the Sign becomes fully visible. In his view, there must be some illumination regardless of the angle.

c) *Position of the Appellant, Icewerx Consulting Inc.*

[22] The Appellant was represented by legal counsel, Mr. R. Colistro.

[23] Two issues have been identified by the Development Authority. The first relates to the proximity of the proposed Sign to another Off-premises Sign 85 metres away. Separation distance requirements are generally in place to address proliferation concerns. However, in this case, a variance is appropriate to allow both Signs to exist at their respective locations because the other Sign to the north faces east/west, whereas the proposed Sign faces north. Those viewing the other Sign on 100 Avenue will not be the same as those viewing the proposed Sign from 109 Street, so the proliferation effect is minimized.

[24] However, should the Board find that the proposed development does not meet the test under section 687(3)(b) of the *Municipal Government Act*, the Appellant is amenable to the condition requiring the removal of the other Sign located to the north. However, the Appellant proposes the following wording for such a condition: that the other Sign be “removed prior to energizing the proposed Fascia Off-premises Sign”.

[25] The second issue identified by the Development Authority relates to Sign illumination. Mr. Colistro first provided background information about the immediately surrounding area, which is characterized by mostly commercial developments, despite the mixed use zoning. The residential area is actually set further back from the proposed Sign than the immediately adjacent commercial spaces.

[26] Mr. Masse’s property west of the subject development is angled in such a way that although the tenants will have a view of the Sign’s physical structure, they will not be impacted by the illumination. This is because the Sign uses new technology developed by Media Resources. This new technology utilizes horizontal louvres that allow the viewing angle to be brightest when driving down 109 Street at the optimal cone of vision. However, as the driver shifts left or right, the Sign becomes darker.

- [27] Referencing his supporting materials, Mr. Colistro acknowledged that there will always be some visibility of the Sign due to how LED lights reflect, but the illumination will not be of material impact. However, the example photos of the case study conducted in Columbia depict a Sign adjacent to a residential area. That Sign was developed specifically to minimize impact upon the residential neighbourhood. Feedback from the local community did not raise any complaints regarding the brightness of that Sign.
- [28] The building east of the proposed Sign will likely be unable to see the Sign. Referencing a recent advertisement for leasing opportunities in that building (Exhibit "A"), Mr. Colistro noted that it is primarily a commercial building.
- [29] There is a small area where the viewing angle transitions from peak brightness to a duller brightness. It is this transitional area where a portion of the mixed use developments in this area will be most affected. However, the illumination experienced in this area will not be the peak brightness that can be seen from 109 Street.
- [30] Due to the mitigating effects of the new Sign technology, the Applicant opposes the recommended condition that the Sign be de-energized at night. Not only will illumination be effectively controlled, de-energization will make the Sign economically unfeasible. The Applicant would prefer a condition requiring the use of the aforementioned horizontal louvres to block light into residential areas.
- [31] The new Sign technology also means higher associated costs. As such, the Applicant would not be amenable to a permit of shorter duration than the typical five year period. Mr. Colistro emphasized that that the technology was created to mitigate the potential impact of Sign illumination.
- [32] The Board questioned whether buildings north of 100 Avenue would be able to see the Sign as well. However, the Appellant noted the proposed Sign is fixed to the second Storey of the building, so even if buildings to the north can see the Sign, the distance is such that the illumination will not materially impact those properties. Furthermore, there is a Petro Canada Sign that would also block some of the potential illumination (Exhibit "B").
- [33] The Board returned to the cone of light diagram provided by Media Resources, which demonstrated the transition from 100% visibility to 1% visibility. The Board noted that there still appears to be some projection onto a portion of the residential area, notwithstanding this transitional cone. The Board questioned whether the Appellant would be amenable to a condition that should the Sign not perform as promised by Media Resources, then it be de-energized.
- [34] In response, the Appellant questioned how such a condition would be worded, and how such a condition would be enforced. Mr. Colistro expressed further concern about potential lack of clarity for his client. Instead, he proposed that the hearing be tabled so

that he could obtain more scaled drawings that will provide more accurate representations of the cone of light and the transition area from 100% visibility to 1% visibility.

- [35] The Board agreed to table the matter, noting in particular that it was concerned about lack of clear information pertaining to this new technology. More information about light illumination onto the surrounding residential area would be desirable, and the tabling of the matter would provide an opportunity to obtain more accurate scaled representations.
- [36] The Board specified that the following additional information would be relevant information in its determination: illumination details, transitional area, blocked area, brightness in nits, and the precise/exact lines delineating the viewing area and transitional area.

August 3, 2017 Hearing

Preliminary Matters

- [37] The Board passed a motion to raise the matter from the table.
- [38] The day prior to the hearing, the Appellant provided new submissions to the effect that the proposed development, if approved, would utilize traditional Digital Sign light technology. The Board noted that the neighbouring property owner who had appeared at the previous hearing in opposition to the development would have been aware of the continuation, but would not have received notice of this specific change.
- [39] In response, the Appellant referred to the Scope of Application, which is for a Minor Digital Off-premises Sign; the scope remains unchanged, notwithstanding the change in technology, and the notice to property owners of the rescheduled hearing would have included the description for this Scope of Application. Alternatives were available to the neighbouring property owner to contact the Board about the rescheduled hearing and enquire about any new materials that may have been submitted. In addition, that same neighbour asked to speak before the Appellant and he left the previous hearing prior to the Appellant's oral submissions about the new Sign technology. The neighbour also opposed the sign regardless of the technology.
- [40] The Development Officer stated that it would have been better if the neighbour could have attended. It was his understanding that the neighbour had doubts about the effectiveness of new Sign technology, and was concerned about light from the subject Sign illuminating onto his own property.
- [41] The Board elected to proceed with the hearing.

d) *Position of the Appellant, Icewerx Consulting Inc.*

- [42] The Appellant was represented by legal counsel, Mr. R. Colistro.
- [43] The hearing was previously tabled at the Appellant's request to allow the Appellant to provide more information regarding the new Sign technology. However, according to his client, this information is not something that can simply be brought forward to the Board. As a result, his client is prepared to move forward with the development application using traditional lighting technologies. The specifications for the physical sign itself remain the same, and were included in the original application.
- [44] In light of the use of traditional Sign technology, his client is also prepared to accept the condition that the Sign be de-energized between 10:00 p.m. and 6:00 a.m. By limiting usage of the Sign during this period, any potential impacts upon neighbouring properties would be mitigated. Furthermore, the proposed development is located on a commercial corridor with much noise, light and activity. Within this context, the light emitted from the Sign will not have a material impact. In support, Mr. Colistro reviewed the subject Site and the surrounding area.
- [45] Regarding the other Off-premises Sign located within 100 metres of the proposed Sign, the Appellant submitted that a variance to the minimum separation distance under the regulations would be justified. That other Sign is located on the Site of a Petro-Canada gas station and is set back from 109 Street. It faces a different direction from the subject Sign, therefore, will be viewable by different vehicular traffic from different angles.
- [46] However, if the separation distance becomes a determining factor for this Board in deciding whether to approve or deny the development, the Appellant has an understanding with the operator of the other Sign. That operator is prepared to remove the other Sign so that the subject proposed development will be in compliance with the 100 metre separation distance regulation.
- [47] The Board recalled Exhibit "A" from the previously tabled hearing, wherein the proposed wording for such a condition was submitted by the Appellant. The proposed condition stated: "[The other] Free standing Off-premise Sign shall be removed from Site and cleared of all debris prior to installation of proposed Digital Sign". The Applicant clarified that "installation" should be replaced with "energizing" or some other terminology to the effect that removal of the other Sign should be completed prior to any display of Copy for the subject Sign.
- [48] The Board also referred to Exhibit "C" which identified the other Sign located less than 100 metres of the subject. After a review of this image, the Appellant confirmed that the other Sign is a static Sign, likely double-sided based on the east/west traffic flow along 100 Avenue, and that it is likely lit by lights projecting onto the Sign face.

[49] The Appellant also submitted Exhibit “D”, a diagram of the proposed development with measurements. The exhibit is an accurate representation of the proposed Sign, which will have a 0 metre setback from the property line, and will articulate 30 centimetres above the roof line of the building on which it will be installed upon.

[50] Upon questioning by the Board, the Appellant confirmed that traditional Sign technology will be sufficient to meet development regulations concerning illumination including the Development Officer’s recommended condition that the Sign be no brighter than 400 nits. Traditional Sign technology allows for the control of digital Sign brightness.

e) *Position of the Development Authority*

[51] The Development Authority was represented by Development Officer, Mr. S. Ahuja.

[52] Mr. Ahuja explained that his previously recommended conditions were based on the new Sign technology, and applicable only if the Board determined that with this new technology, the proposed development would not impact the surrounding properties. However, now that the development is moving forward with traditional technology, the City’s position is that it does not support the proposed Sign, which will project illumination into neighbouring residential areas.

[53] There is a long history associated with the Sign located less than 100 metres from the proposed Sign. The City worked closely with that Sign operator so that they might keep the Sign on that site. Although he did not have the complete details, it was his understanding that the Sign is located on land that does not belong to the operator. The land is likely owned by the City or the rail company that operates the seasonal rail line running through the Strathcona area.

[54] Mr. Ahuja submitted Exhibit “E”, a Google Maps image showing that there are residential mixed uses around the proposed Sign. Although the Sign will be located in the downtown area, the impact upon surrounding residential areas must be recognized. The downtown core is undergoing change, with more people increasingly interested in living downtown. At the same time, businesses are also increasingly attracted to developing in the area. All these interests must be balanced, and in the case of this specific development, there is simply no way to completely block the Sign’s light from projecting onto neighbouring residential properties. Furthermore, the concern is not only from the light emitted, but also from the constant flickering of the light, with the Sign copy changing every six seconds.

[55] The Board noted that Minor Digital Off-premises Sign is a Discretionary Use within the CMU Zone. Based on the Development Authority’s position, the Board questioned whether this Use has been effectively sterilized within the Special Area Downtown. The Development Officer noted that multiple uses are available on this Site. For example, an On-premises Sign is a Permitted Use. The nature of a Discretionary Use requires that he consider the impact upon neighbouring properties. He was unable to comment on

whether there is any other location along 109 Street on which the proposed development would be better suited, as he would need specific addresses.

- [56] In response to questioning from the Board, Mr. Ahuja submitted Exhibit “F”, a Google Maps image of 109 Street. The Exhibit demonstrated that 109 Street is a six-lane road, and that the building upon which the proposed Sign will be installed is not directly adjacent to the roadway. The Board noted that it appears the building east of the subject development is quite tall, thereby providing some buffer to any light emission for residences in that direction. Furthermore, the Sign appeared to be separated from the residential area to the west by some deciduous trees and a utility corridor.
- [57] Mr. Ahuja emphasized that although the Site is zoned commercial and although signs are commonly associated with commercial uses, the proposed Use was listed as a Discretionary Use which means that not all Minor Digital Off-premises Signs are necessarily appropriate in this particular CMU Zone. The Development Authority must consider impacts when exercising its discretionary authority.
- [58] Mr. Ahuja submitted Exhibit “G”, a letter from the operator of the other Sign located within 100 metres. Mr. Ahuja noted that although the letter refers to the letter-writer as the “landowner”, they are not actually the property owners of the land. The letter confirmed that they would be prepared to remove the billboard Sign if the subject Digital Sign is approved.

f) *Rebuttal of the Appellant*

- [59] The Appellant reviewed the General Purpose of the CMU Zone and submitted that the appropriate area for what is being proposed is actually the downtown area. Residents would expect a certain level of light, noise and activity, and the impacts upon such residents would be different from residents in more traditional suburban residential neighbourhoods. Here with constant traffic, commercial highrise buildings and light are the norm.
- [60] Regarding concern about light flickering every six seconds as the Sign copy changes, the Appellant would be prepared to change the copy only every eight seconds in conformance with the conditions suggested by Transportation. The copy itself would consist of static advertisements without animation or video.

Decision

- [61] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

- 1) The proposed Minor Digital Off-premises Sign permit is approved for a period of five years until August 18, 2022.
- 2) The proposed Fascia Minor Digital Off-premises shall comply with the plans stamped approved by the Subdivision and Development Appeal Board.
- 3) The proposed Fascia Minor Digital Off-premises Sign shall be de-energized daily between 10:00 p.m. – 6:00 a.m.
- 4) Minor Digital Off-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:
 - a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
 - b) Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b))
- 5) The proposed freestanding Digital On-Premises Sign shall comply with the following conditions in consultation with the Transportation Planning, in accordance with Section 59.2(11):
 - a) That, should at any time, Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
 - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
 - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

d) The proposed digital sign shall feature a holding time or minimum Message Duration of 8 seconds or greater per Transportation Association of Canada's (TAC) Digital and Projected Advertising Display review guideline.

ADVISEMENTS:

1) Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

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

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

- 1) Section 59.2(3) is varied to permit some Sign illumination onto surrounding residential premises during the allowed hours of operation only.
- 2) Section 59F.3(6)(e) is varied to permit a separation distance of 85 metres between the subject Sign and another Off-premises Sign.

Reasons for Decision

[63] The proposed development, a Minor Digital Off-premises Sign, is a Discretionary Use in the CMU Commercial Mixed Use Zone.

[64] The proposed Discretionary Use requires variances to two applicable development regulations, namely:

- a) Section 59.2(3) which provides that the proposed Minor Digital Off-premises Sign “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, shall not face an abutting or adjacent Residential-Related Use, and shall not face the Extended Medical Treatment Services Use to the satisfaction of the Development Officer”; and,
- b) Section 59F.3(6)(e) which requires the proposed Minor Digital Off –premises Sign be located at least 100 metres from any other Off-premises Sign.

- [65] The Development Authority's central concern was with illumination from the Sign projecting onto the surrounding residential uses. Similar concerns were also cited in the three emails received by the Board from surrounding property owners, and affirmed in person by one of those property owners who appeared at the hearing to oppose the development.
- [66] The Board notes that when the hearing was reconvened, the Appellant indicated that while the scope of application will remain the same, the proposed development will employ traditional technology currently in use on other Digital Signs in Edmonton, rather than the previously proposed newer technology. The Board accordingly has disregarded all of the Appellant's earlier submissions related to illumination controls associated the new technology in making this decision.
- [67] The Board finds that the proposed Discretionary Use is reasonably compatible with its surroundings for the following reasons:
- a) The subject Site is located within a narrow portion of land along the west side of 109 Street within sub area 1 of the Capital City Boulevard Area. This land is specifically recognized as a commercial node within a mixed use area in the Capital City Downtown Plan. This designation should be taken into account when impacts upon and compatibility with adjacent residential uses are considered.
 - b) The proposed Use is consistent with the General Purpose of the CMU Zone, which references the corridor along which this particular site is located and states:

...to provide a Zone for medium intensity development that accommodates a mix of predominantly commercial, office, institutional and business Uses as a secondary office commercial area while emphasizing retail activities, entertainment and service Uses at Grade. The intent is to accommodate the existing commercial development west of 109 Street; and to allow Conversion to residential and related Uses.
 - c) Commercial uses are typical along this portion of the 109 Street corridor. Commercial uses are located immediately to the north, east and south of the subject Site. The building to the northeast is mixed with commercial uses at the lower levels and recessed residential uses on the upper levels.
 - d) The Board agrees with the Appellant and the Development Officer that signage is commonly associated with commercial uses. Many static commercial Illuminated Signs associated with the businesses in close proximity to the proposed development and nearby residences appear in the photographs of the immediate area submitted to the Board.
 - e) There is a large, lit billboard 85 metres northwest of the proposed development which is located closer to several residential uses. It directly faces residents of a multi storey

- Apartment building immediately to the west and although static, it is arguably more impactful than the proposed development in terms of illumination.
- f) Further, this mixed commercial use zone is located in downtown Edmonton, adjacent to 109 Street, a six lane arterial roadway and major commuter route across the river. This traffic brings significant light to the area.
 - g) In aggregate, lighting and signage are typical and characteristic of this block along, and immediately adjacent, to the western portion of 109 Street. Many of these Signs cast light on nearby residential uses.
 - h) The additional condition imposed by the Board and explained more fully below which requires that the Sign be de-energized from 10:00 p.m. to 6:00 a.m. daily will increase the compatibility of the proposed development with the nearby residential uses.
 - i) The City of Edmonton Transportation Department does not object to the proposed location which also suggests compatibility. The Board notes that the Transportation Department has recommended a minimum Message Duration of 8 seconds in the interest of traffic safety and the Board has imposed this requirement as a condition of approval.

[68] The Board allows a variance to section 59.2(3) to allow some illumination on surrounding residential uses during only certain hours of the day for the following reasons:

- a) While there will be some illumination on surrounding uses attributable to the proposed development, the Sign does not directly face an abutting or adjacent residential use, nor any surrounding residential use.
- b) The residential uses within the mixed use building located to the northeast are partially shielded from illumination from the proposed development by the high rise commercial building directly east of the subject Site.
- c) The residential uses closest to the northwest portion of the subject Site face existing commercial uses (including lit static Signs) and are separated from the proposed development by parking lots, a utility corridor for the light rail transit and existing mature trees. These existing conditions lessen the impact of illumination from the proposed development.
- d) The requirement of de-energization from 10:00 p.m to 6:00 a.m. daily substantially mitigates any adverse impacts by eliminating all illumination on nearby residential uses during nighttime hours when residents might typically be expected to be at home sleeping or require a darker streetscape. This condition directly addresses a specific

concern voiced at the hearing by the owner of the residential apartment building north west of the subject Site.

- e) The proposed development is located in a busy downtown, mixed use neighbourhood on a busy commercial corridor. The subject Site is in close proximity to heavy traffic, many commercial uses and other lit Signs. All of these factors contribute to significant levels of ambient light in this area. The pre-existing background of ambient light decreases the incremental impact of the proposed development during allowed hours of operation.
- f) The proposed Sign has the ability to control brightness based on the amount of ambient light. Technical specifications in this regard are included in the Application. These technologies will allow the Sign to dim in compliance with the other generally applicable development regulations which require a reduction in light during darker allowed hours of operation, further mitigating the impact of this Sign.

[69] The Board allows a variance of 15 metres, reducing the 100 metre separation distance from other Off-premises Signs required per section 59F.3(6)(e) to 85 metres and finds it will not have a material adverse impact for the following reasons:

- a) Both signs are not simultaneously visible to passing traffic as the existing Off-premises Sign has an east/west orientation along 100 Avenue and is set well back from the intersection with 109 Street, while the proposed development faces north and is located a along 109 Street a few lots south of 100 Avenue.
- b) Intervening commercial developments also visually separate the signs and block simultaneous viewing of the Signs from several vantage points.

[70] The approved permit is limited to a period of five years, at which time the Appellant must reapply for a new permit. At that time, the compatibility and impact of the subject development may be re-evaluated.

[71] For the above reasons, the Board finds that the proposed development, subject to the imposed conditions, is reasonably compatible with neighbouring 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. The appeal is allowed.

Ms. K. Cherniawsky, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. R. Handa; Mr. A. Peterson; Ms. C. Van Tighem

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.