



**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: 184916844-001
File Number: SDAB-D-17-141

Notice of Decision

- [1] On August 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 17, 2017**. The appeal concerned the decision of Development Services to comply with an Order to:

Revert the building back to a Semi-detached house by decommissioning the Dwellings in the Basement and ensure the occupancy for each side of the Semi-detached house does not exceed the regulations for a single Household

- [2] The subject property is on Condo Common Area and Plan 1220634, units 1-2, located at 10333 - 150 Street NW and 10335 - 150 Street NW, within the RF2 Low Density Infill Zone. The Mature Neighbourhood Overlay and the Jasper Place Area Redevelopment Plan apply to the subject property.

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

- Copy of the Stop Order;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [6] The Presiding Officer raised a jurisdictional issue regarding when the appeal was filed and explained to the Appellant that the Board is constrained by the 14-day limitation period prescribed by section 686(1) of the *Municipal Government Act*, RSA 2000, c M-26 which states:

A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit,

[7] The Presiding Officer indicated that the Board must therefore determine whether the Appellant filed her appeal within the 14-day limitation period. If the appeal was filed late, the Board has no authority to hear the appeal.

Summary of Hearing on the Preliminary Matter:

i) *Position of the Appellant, Valerie Phillips-Boyle*

[8] Ms. Phillips-Boyle was accompanied by M. Ferguson and R. Ferguson, the current owners of the subject property.

[9] Ms. Phillips-Boyle did not dispute that she had received an e-mail with the Order on June 27, 2017.

[10] She attempted to file an appeal on-line on July 13, 2017, but due to problems with the on-line filing system was not able to file successfully until July 17, 2017. She is only appealing the Stop Order on 10335 – 150 Street, not 10333 – 150 Street.

[11] She was under the impression the 14 day time period referred to business days.

Decision

[12] The Board does not have jurisdiction to hear the appeal.

Reasons for Decision

[13] Section 686 (1)(a)(i) of the *Municipal Government Act* states:

A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

(a) in the case of an appeal made by a person referred to in section 685(1), after

(i) the date on which the person is notified of the order or decision or the issuance of the development permit,

- [14] This Board only has jurisdiction to hear appeals that are filed within this 14-day time limit. The Development Officer's written submission indicated that this Stop Order was sent to the Appellant by e-mail on June 27, 2017. The Appellant did not dispute the fact that she was notified of the Stop Order on that date. The 14-day appeal period, therefore, expired on July 11, 2017.
- [15] The Appellant's first attempt to file an appeal was on July 13, 2017, which was already two days late. The Appellant advised that she was under the impression that only business days were used in calculating the 14-day appeal period. Unfortunately she was incorrect, but this error on her part does not have the effect of extending the statutory appeal period.
- [16] Because the appeal was filed out of time, this Board has no jurisdiction to hear the matter.

A handwritten signature in blue ink, appearing to read "Mark Young", with a stylized flourish at the end.

Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. A. Lund; Ms. D. Kronewitt Martin; Ms. M. McCallum; Ms. C. Van Tighem

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*, 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 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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



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3537
sdab@edmonton.ca
edmontonsdab.ca

Date: August 18, 2017
Project Number: 246857540-001
File Number: SDAB-D-17-142

Notice of Decision

- [1] On August 9, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **July 17, 2017**. The appeal concerned the decision of the Development Authority, issued on July 4, 2017 to refuse the following development:

Install (1) Minor Digital On-premises Off-premises Freestanding Sign (2 digital panels 14.6 metres by 4.2 metres facing E/W) (IMAGINE OUTDOOR-Homenuk Farm Partnership)

- [2] The subject property is on SE-17-53-25-4, located at 19060 - 118A Avenue NW, within the IM Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

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

- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
- The Development Officer’s written submissions; and
- The Appellant’s written submissions.

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

- Exhibit A – Map showing TUC boundary submitted by the Appellant
- Exhibit B – Decision of Calgary Subdivision and Development Appeal Board 2015 CGYSDAB 007 submitted by the Appellant
- Exhibit C – Court of Appeal Decision *Canadian Waste Services Inc. v. Edmonton (City of) Subdivision and Development Appeal Board*, 2000 ABCA 35
- Exhibit D – Map submitted by City of Edmonton, Planning Coordination
- Exhibit E – 2014 Hourly Traffic Volumes submitted by City of Edmonton, Planning Coordination
- Exhibit F – Turning Movement Summary Diagram submitted by City of Edmonton, Planning Coordination

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] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [7] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, R.S.A 2000, c. M-26 (the “*Municipal Government Act*”).

Summary of Hearing*i) Position of the Appellant, Imagine Outdoor Advertising*

- [8] Mr. R. Noce appeared as counsel for the Appellant. Mr. K. Donnan of Imagine Outdoor Advertising and Mr. N. and L. Homenuk, landowners were also present and made presentations.

Mr R. Noce

- [9] Mr. Noce referred the Board to the Reasons for Refusal. The first paragraph on the refusal is simply a statement of what the zoning is and the schedule that needs to be complied with. The second paragraph provides the only reason for the refusal which simply indicates that the Development Officer concurred with the analysis of Alberta Transportation.
- [10] As per Section 11 of the *Edmonton Zoning Bylaw*, the Development Officer can only consider its planning documents. The Development Officer erred in rendering her decision as no concerns were stated that related to the *Edmonton Zoning Bylaw* or the Yellowhead Corridor Area Structure Plan.
- [11] The Development Authority exceeded its jurisdiction to render a decision of refusal by simply relying on Alberta Transportation’s opinion. The Board also does not have the jurisdiction to impose Alberta Transportation regulations. He compared it to the Board making a decision based on Alberta Gaming and Liquor Commission regulations, Alberta Building Code Regulations or the Criminal Code of Canada.
- [12] In one of the documents attached to the Development Officer’s written submission, the City of Edmonton incorrectly stated that the “Sign is within the Anthony Henday Drive Transportation and Utility Corridor (TUC) boundary”. Mr. Noce introduced a map on which he had marked the TUC boundary and the proposed location of the subject sign (marked Exhibit A). The sign clearly would not be within the TUC boundary. The City may have done their analysis on an incorrect location.
- [13] Mr. Noce referenced a decision of the Calgary Subdivision and Development Appeal Board (File No. DP2013-1519) (marked Exhibit B) where the facts were similar to

today's case. The Use was allowed subject to a Discretionary Use Permit and the *Highway Development and Protection Act* was also referenced. The Calgary Board determined that the Board had no jurisdiction to consider provisions of a provincial act and allowed the development as there were insufficient planning reasons to refuse it.

- [14] An Alberta Court of Appeal Decision was also referenced – *Canadian Waste Services Inc. v. Edmonton (City of) Subdivision and Development Appeal Board*, 2000 ABCA 35 (marked Exhibit C). That Board had added conditions to the Use which were beyond its jurisdiction. The Court of Appeal found that:

“What is more, we have grave doubts that Council or the Legislature intended to set up the S.D.A.B. as a second legislature to flesh out provincial public health or environmental laws, or intended to let the S.D.A.B. enforce and police either the existing provincial regulations, or the new ones created by the S.D.A.B. Counsel for the appellant said that his client feared double, even conflicting, policing. In our view, that concern had some foundation.”

- [15] The Board only needs to concern itself with the *Edmonton Zoning Bylaw* and the Yellowhead Corridor Area Structure Plan. The Board cannot impose a condition saying a party must comply with Alberta Transportation regulations. This would give the City of Edmonton enforcement power they are not responsible for.
- [16] Mr. Noce acknowledged that a Minor Digital On-premises Off-premises Freestanding Sign is a Discretionary Use in this zone but stressed that no other variances are required. He takes the position that they comply with Section 59.2(2)(c) of the *Edmonton Zoning Bylaw*. The refused permit indicates that “Transportation Planning and Engineering concurs with the opinion of Alberta Transportation and objects to the installation of the proposed digital sign, as it would pose a risk for distraction, glare, and unwarranted attention.” Section 59.2(2)(c) of the *Edmonton Zoning Bylaw* is not mentioned.
- [17] “Distraction” and “glare” are very subjective. There is a risk of distraction every time someone gets into car and uses their radio knob or dials their hands free phone.
- [18] The refusal went on to say that “Distracting drivers travelling at high speeds increases the risk of accidents and consequences of the driver’s distractions. The driver’s attention is critical to avoid potential safety hazards on highways.” You could have no distractions; higher speed always poses a greater safety risk.
- [19] The City of Edmonton Transportation Department has not done its own analysis and has relied solely on Alberta Transportation’s opinion and Alberta Transportation regulations. This is clearly indicated in the memo from K. Sizer dated June 22, 2017. Mr. Noce has not seen any of the analysis that was done by Alberta Transportation and has found nothing that requires the City of Edmonton to seek the opinion of Alberta Transportation. Section 11 of the *Edmonton Zoning Bylaw* does not give Development Officers jurisdiction regarding provincial legislation.

- [20] While signs in some places may create unacceptable safety risks there is nothing before the Board that raises any such concerns other than it is located within 300 metres of the Yellowhead Trail, which is taken from a provincial act that the City has no jurisdiction over. Mr. Noce did not know the speed limit at the proposed sign location.
- [21] The Presiding Officer asked Mr. Noce if he was familiar with a recent Court of Appeal case (2017 ABCA 140) which involved an application for a Home Based Business on rural property. The Edmonton SDAB had approved the permit and allowed semi-trailer trucks to park on the premises. One argument advanced against the proposed development had been that the road that led to the property was not a trucking route and allowing the development would violate road use regulations. The Board determined that regulations regarding road use were outside its jurisdiction. The Court of Appeal ruled that the Board should have considered how the trucks would impact this street. In other words, the Court of Appeal ruled the Board was required to consider other legislation when it overlapped its jurisdiction.
- [22] Mr. Noce confirmed he was aware of this decision but felt that case is very different than the case before the Board today. Truck routes and the weight of vehicles is within the jurisdiction of the City of Edmonton. The weight of a vehicle is very objective – it is either overweight or not. Also that decision related to a Home Based Business and Section 75.3 of the *Edmonton Zoning Bylaw* clearly states that “the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located.” Traffic was a legitimate issue for the Board to consider.
- [23] If the City of Edmonton approves a use the onus is still on the landowner to comply with other relevant legislation.

Kyle Donnan – Imagine Signs

- [24] Imagine Signs is an Alberta based business with nine signs in Edmonton and Calgary. A map was shown which indicates that the Development Officer and Alberta Transportation may have been analyzing the wrong parcel of land when rendering their decision (Exhibit C). This map incorrectly shows the sign being within the TUC when it is actually outside of the TUC boundary.
- [25] He referred to a Government of Alberta Transportation document providing guidelines for Electronic Message Signs. Page 4 of 6 confirms that the subject sign requires municipal approval and cannot be located within 800 metres of the centre point of an interchange. The proposed sign is 835 metres away from the centre point of the interchange at Anthony Henday Drive and Yellowhead Trail.
- [26] He reviewed his written submission showing the location of the proposed sign, distances to property and curb lines, the surrounding land uses and renderings of the proposed sign. The overall size and height is in compliance with all rules and regulations and compatible

with surrounding parcels of land. The closest free standing On-premises Off-premises sign is outside of the required 300-metre separation distance.

- [27] A series of photos of other digital signs existing within Edmonton City limits was reviewed. These signs are all similar in size and format to their proposed sign and are located along Yellowhead Trail, St. Albert Trail and the Sherwood Park Freeway. All of these signs are within 300 metres of the centre line of a major roadway. He acknowledged that the characteristics of the roadways differ from location to location.
- [28] He could not confirm what the speed limits were at the location of these signs. However, he has not come across any literature saying there is a correlation between speed and signs regarding safety. He also did not know if the signs were located in the same zone as the proposed sign.
- [29] Sign location C is the most relevant comparison as it is almost 100 metres closer to Anthony Henday Drive than his proposed sign. He did not know the distance to the closest exit ramp for either the sign at Location C or his proposed sign. The Development Authority never asked him to provide a transportation safety audit and distances from on and off ramps never came up.
- [30] He is unaware of any cases in Canada that directly correlate driver distraction and safety with electronic signs. The Transportation Authority of Canada (TAC) has stated they believe there may be a direct correlation but have no evidence in regards to this.
- [31] In conclusion they were provided with no documentation behind the reasons for refusal - only an opinion. Their application is clearly not within 800 metres of the centre point of an interchange. This application should fall under the *Edmonton Zoning Bylaw* not Alberta Transportation regulations.
- [32] In response to a question from the Board, he mentioned he had encountered a similar problem with Alberta Transportation at a site in Airdrie. In that case, the municipality took jurisdiction and approved the sign.

Landowners – Mr. L. and N. Homenuk

- [33] Mr. L.Homenuk spoke on behalf of himself and his father, Mr. N. Homenuk.
- [34] This land was purchased and cleared by his grandfather over 75 years ago and is the last piece of land remaining in the family. Family members still make their home on that land and it is farmed.
- [35] Within the last five years, property taxes have gone from \$5,000 a year to over \$36,000 per year which has prompted them to seek other sources of income. They are not able to make it on farming alone.

- [36] He is not aware of all of the bylaws and regulations. However, All Weather Windows has a third party advertising sign on a neighbouring site near the exit to 184 Street. He questioned why this sign is not considered a distraction.
- [37] In conclusion there is no empirical evidence to demonstrate that the proposed sign would be a distraction to drivers.

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

- [38] Ms. Noorman was accompanied by Mr. T. Sonmor of Alberta Transportation and A. Alou of Planning Coordination, City of Edmonton. Part of the development review process requires her to involve and consult with Transportation and she uses their responses when making her decision. That is what she did in this case. She refused the permit after getting input from Transportation.

A. Alou – City of Edmonton

- [39] Mr. A. Alou is a transportation engineer with Planning Coordination, City of Edmonton and has been in this position for over six years.
- [40] He reviewed this application fully when it first came in. He is not opposed to digital signs but has to exercise due diligence when it comes to safety issues.
- [41] The proposed sign is located at a high risk location due to the 100 kilometre per hour speed limit and the fact that this section of road is a merge and weave area with both on and off-ramps. A ramp coming eastbound onto Yellowhead Trail from northbound Anthony Henday requires drivers to either stay in the right lane to exit south onto the interchange further east at 184 Street or to exit that lane to continue east on Yellowhead Trail. Section 59.2(2)(c) of the *Edmonton Zoning Bylaw* directs him to look at “intersections, merge points, exit ramps”. He reviewed a map showing the proposed location of the sign relative to the interchange at Anthony Henday Drive and Yellowhead Trail (Exhibit D).
- [42] He provided two printouts related to traffic volumes at the Anthony Henday/Yellowhead interchange - one showing hourly east and westbound traffic volumes (marked Exhibit E) and the second being a turning movement summary diagram of the interchange (marked Exhibit F). Accordingly to the latter, average annual daily eastbound traffic is over 54,000 vehicles and it exceeds 59,000 vehicles in the summer. Traffic volume is expected to increase as development in west Edmonton progresses.
- [43] He acknowledged that the sign was originally thought to be on a parcel of land within the TUC. This error was quickly noticed and the review was done using the correct location. All the feedback received from Alberta Transportation and the City of Edmonton Transportation Department was based on the correct location.

- [44] The City of Edmonton's review was independent of Alberta Transportation's and was conducted by a team, not just one person. It is their practice to consult with experts at Alberta Transportation if the proposed sign is on provincial property or within close proximity and that is what they did in this case. A final response was prepared by the City's Transportation Department and was reviewed and signed by K. Sizer on June 22, 2017. Ms. Sizer is the General Supervisor of their section and has been a transportation engineer for over 20 years.
- [45] Discussions were held with the Appellant over the phone during which the safety concerns were clearly communicated.
- [46] Mr. Alou pointed out the location of the sign on a map (Exhibit D). It is located 187 metres past where Alberta Transportation's jurisdiction ends (approximately 6.5 seconds of driving time).
- [47] The Transportation Association of Canada (TAC) recognizes that distractions could pose a safety issue although it provides no empirical evidence. Traffic engineers are expected to assess each situation case by case and make a decision based on their professional judgement. In this case, Mr. Alou felt that a digital sign would be a critical distraction near a driver's decision point.

T. Sonmor, Alberta Transportation

- [48] Mr. Sonmor is a development technician with Alberta Transportation based out of Stony Plain.
- [49] He stated that most people do not realize that the Anthony Henday right of way continues into the City of Edmonton at that location to approximately 100 metres east of the off-ramp. He pointed out where their authority goes on the map (Exhibit D). The sign has to be 300 metres away from Alberta Transportation's right of way. All of the on and off ramps along the Anthony Henday are under the jurisdiction of Alberta Transportation.
- [50] He is very familiar with this location and feels the high speed along with the merging traffic and the high volume of vehicles create a safety issue without the added distraction of a digital sign. Alberta Transportation has intentionally not allowed any electronic signs west of the Anthony Henday/Yellowhead Trail interchange along Highway 16 in the area he is responsible for.
- [51] He confirmed that this sign would require a permit from Alberta Transportation as does any type of development within 300 metres on either side of the highway (north and south). A sign permit would never be granted at this location. Once a permit is granted it is very difficult to have a development removed from private land. The Minister of Transportation would have to take court action.
- [52] Alberta Transportation would have reviewed the other signs that were shown as comparables by the appellant. Each case is different and factors that are considered

include speed limits and if the sign is located near a merging lane or other decision making point, along a straight stretch of road with no intersections, or a location where vehicles may be waiting at a traffic light. The other signs shown by the Appellant are in locations where the speed limit is much lower than at the proposed location; therefore, they pose less of a safety risk.

- [53] While there may be grandfathered signs in Edmonton, some of these are not safe and will be re-assessed once their permits expire. Existing unsafe situations should not be used as justification for allowing another unsafe situation.

A short break was taken to allow the Board Officer to provide copies of the exhibits received to Mr. Noce.

iii) Rebuttal of the Appellant

- [54] The City's presentation left the impression that Exhibit F shows there are over 54,000 vehicles travelling eastbound on Yellowhead Trail. Mr. Noce interpreted the Exhibit to show the number is actually 27,000. The traffic using the off-ramp from Anthony Henday Trail to go eastbound onto Yellowhead is considerably less, ranging from 1640 vehicles per hour in the morning to only 578 per hour in the afternoon.
- [55] Alberta Transportation confirmed they have the power to deal with signs located where they do not want them but it is cumbersome. The fact that Alberta Transportation has to go to court is their problem and not the Board's issue.
- [56] The City of Edmonton engineer referenced the *Highway Protection and Development Act*; however, this Board is not equipped to nor does it have the jurisdiction to make decisions based on this piece of legislation.
- [57] The Development Officer had provided eight recommended conditions for the Board to consider should this development be approved. Mr. Noce confirmed he was in favour of all of the conditions except for No. 1 which stated that a sign application should be submitted to Alberta Transportation. The Board does not have the jurisdiction to impose such a condition.
- [58] He also advised that his client is prepared to reduce the approval period in condition No. 2 to three years rather than five years.
- [59] They are prepared to accept the remainder of the conditions and feel they provide the City of Edmonton with ample power to deal with any safety issues that could arise with regards to the sign.

Decision

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

Reasons for Decision

- [61] A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the IM Medium Industrial Zone.
- [62] Section 59.2(2)(c) of the *Edmonton Zoning Bylaw* states that Minor Digital On-premises Off-premises Signs “shall be located such that the Sign does not obscure a driver decision point. The Development Officer and Transportation Services shall be satisfied that each Copy Area: (c) is not located in the field of view near or past other traffic conflict points such as intersections, merge points, exit ramps, or curved roadways”.
- [63] The Development Officer relied on this Section to refuse the Development Permit. As was required by the above section, the Development Officer referred the matter to Transportation Services for their review of the Sign. A memo from Transportation Planning dated June 22, 2017, indicated that Transportation Planning had referred the matter to Alberta Transportation for their comments. In that memo, there is the following paragraph:
- Alberta Transportation indicated that they would OBJECT to the installation of the proposed digital sign, as it would pose a risk for distraction, glare, and unwarranted attention. Distracting drivers travelling at high speeds increases the risk of accidents and consequences of the driver’s distractions. The driver’s attention is critical to avoid potential safety hazards on highways. Transportation Planning and Engineering is supportive of Alberta Transportation’s concerns and does not support the proposed minor digital sign for the above reasons.
- [64] In the course of his argument, counsel for the Appellant took the position that this paragraph indicated that the City’s Transportation Planning Department had not done their own analysis of this Sign and had relied entirely on the input from Alberta Transportation.
- [65] After hearing the evidence of the City’s Transportation Planning traffic engineer, the Board is satisfied that the City’s Transportation Planning Department did do their own detailed analysis and they came to the same conclusions that Alberta Transportation came to when they did their review. In fact, the evidence was that senior personnel within the City’s Transportation Planning Department reviewed this application. Neither the City’s Transportation Planning Department nor the Development Officer based their decision about the Sign solely on the opinion of Alberta Transportation or on provincial legislation. Alberta Transportation’s concerns were simply one factor taken into consideration.
- [66] In any event, this appeal is a hearing de novo and it is up to the Board to make its own decision based on the evidence presented at the hearing.

[67] The evidence before the Board is as follows:

- a. The proposed location of this Sign is 835 metres east of the centre of the interchange at Anthony Henday Drive and Yellowhead Trail and approximately 45 metres south of Yellowhead Trail. The Sign would not be located in the Transportation and Utility Corridor.
- b. Exhibit D shows that the ramp allowing northbound traffic on Anthony Henday Drive to proceed eastbound on Yellowhead Trail (the “ramp”) merges with Yellowhead Trail approximately 200 metres west of the proposed location of the Sign.
- c. At the proposed location of the Sign, the speed limit is 100 kilometres per hour.
- d. Exhibit F shows that at this location the 2016 average annual traffic volume on the ramp is 9500 vehicles per day and on Yellowhead Trail eastbound it is 54,870 vehicles per day.
- e. Further east from this location is another interchange where Yellowhead Trail crosses 184 Street. Drivers in the southernmost eastbound lane where the ramp enters Yellowhead Trail must decide whether to remain in that lane to exit onto 184 Street or to change lanes to continue east on Yellowhead Trail. Similarly, drivers in the other eastbound lanes must decide whether to changes lanes into the southernmost eastbound lane.
- f. Both the transportation engineer who appeared on behalf of Transportation Services, City of Edmonton, and the representative from Alberta Transportation expressed the view that a Digital Sign at this location was a safety concern because of the high speed limit, the high traffic volumes and the fact that it is near a traffic conflict point.

[68] The Board finds that these concerns are warranted. A Digital Sign with its changeable Copy at this location has the potential to create a safety hazard for drivers for those reasons.

[69] The proposed location of this Sign is precisely the type of location referred to in Section 59.2(2)(c) of the *Edmonton Zoning Bylaw*. This section requires that both the Development Officer and Transportation Services must be satisfied such signs are not located in the field of view near or past traffic conflict points.

[70] Pursuant to Section 687(3)(d) of the *Municipal Government Act*, the Board has the power to vary the regulation in Section 59.2(2)(c) if it is of the opinion that the proposed development would not significantly interfere with the amenities of the neighbourhood or the use, enjoyment or value of neighbouring parcels of land. In this case, part of the neighbourhood consists of Yellowhead Trail. The Board is of the opinion that the proposed Sign is a potential safety risk and, therefore, could materially affect the use of Yellowhead Trail.

- [71] Further, even if this variance were not required, the Board is of the opinion that, because of the safety concerns, this discretionary use should not be allowed at this location.
- [72] The Appellant's counsel stated that no definitive evidence was presented showing a correlation between Digital Signs and traffic accidents. However, the Board gives considerable weight to the opinion of the traffic engineer who gave evidence on behalf of Transportation Services. The combination of a high speed limit, high traffic volumes and the proximity to a traffic conflict point increases the risk as compared to locations where such factors do not come into play. Further, in matters involving public safety, the Board believes that a precautionary approach is appropriate.
- [73] Appellant's counsel referred to decisions by the Calgary SDAB and the Alberta Court of Appeal where it was ruled that it was improper for the SDAB to consider legislation that was not planning legislation when making its decisions. Those decisions are not relevant in this instance because the Board has not relied on any non-planning legislation in arriving at its decision.
- [74] The Appellant referred to the locations of several existing Digital Signs as evidence that such developments have been allowed near major highways in the past. However, the Board is not satisfied that the locations of these Signs are comparable to the location of the proposed Sign in terms of speed limit, traffic volume and proximity to traffic conflict points. As such, reference to those other Signs was not helpful in the Board's analysis of this case.
- [75] Given all of the above, the Board is satisfied that it should exercise its discretion not to allow the Sign at this location. The Appeal is denied.



Mark Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. A. Lund; Ms. D. Kronewitt Martin; Ms. M. McCallum; Ms. C. Van Tighem

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*, 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 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.