

***Edmonton Subdivision and
Development Appeal Board***

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SDAB-D-15-252

An appeal to change the Use from an Indoor Participant Recreation Service to a Religious Assembly with a capacity of 456 seats, and to construct interior alterations (SouthWest Muslim Community Centre) located at 280 – Saddleback Road NW was **WITHDRAWN**

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Date: February 25, 2016
Project Number: 181864289-001
File Number: SDAB-D-16-041

Notice of Decision

[1] On February 11, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **December 18, 2015**. The appeal concerned the decision of the Development Authority, issued on December 15, 2015, to refuse the following development:

to remove an existing Freestanding Off-Premises Sign and install a Freestanding Minor Digital Off-Premises Sign

[2] The subject property is on SW-9-52-2404, located at 3803 Gateway Boulevard NW, within the CHY Highway Corridor zone. The Major Commercial Corridors Overlay applies to the subject property.

[3] The following documents were received prior to the hearing:

- Written submission from the Appellant's legal counsel;
- A copy of the Calgary Trail Land Use Study;
- A Sign Combo Permit Application from the Development Officer;
- A copy of the refused development permit with attachments from the Development Officer;
- The Development Officer's written submissions; and
- A Canada Post delivery confirmation dated December 18, 2015.

Summary of Hearing

[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 appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

i) *Position of the Appellant, Pattison Outdoor Advertising*

[6] Mr. J. Murphy, Counsel for the Appellant, appeared at the hearing and spoke on behalf of Pattison Outdoor Advertising.

[7] Mr. Murphy reiterated the arguments made in the Grounds for Appeal that were filed with the Notice of Appeal.

[8] He confirmed that the Development Authority had refused the Appellant's application for three reasons: 1) The proposed development does not comply with the Calgary Trail Land Use Study, 2) the proposed Height of the Sign would exceed the eight-metre Height restriction for Freestanding Minor Digital Off-premises Signs prescribed by Section 59F.3(6)(b) of the *Edmonton Zoning Bylaw* and 3) the location of the proposed development would violate the 300-metre separation requirement between Digital Signs of an area greater than 40 square metres, as stated in section 59F.3(6)(e) of the *EZB*.

[9] In response to the first reason for refusal, Mr. Murphy stated that the Appellant's proposed Sign would, in fact, comply with the Calgary Trail Land Use Study and that the development would further the Study's goal of replacing older Signs perceived to be unattractive. He went on to explain that, in any event, the Study is not a Statutory Plan as defined by the *Municipal Government Act* and therefore the Board is not bound by it.

[10] In addressing the Height restriction articulated by the *Edmonton Zoning Bylaw*, Mr. Murphy noted that the additional Height of the proposed development is justified due to the presence of an intervening berm built by the City. If the Appellant's Sign existed at the mandated Height of eight metres, it could not be seen from the road. He further stated that the variance being sought would do nothing to affect the neighbouring properties or the amenities of the neighbourhood. As outlined in its permit, the existing freestanding Sign had originally been built to conform to the bylaw but had subsequently been raised at the time the berm was built. The proposed digital Sign would be the same Height as the current Sign.

[11] Mr. Murphy recognized that the new digital sign would be approved on a five-year cycle and noted that, if the City in fact peeled back the berm, a Height variance would no longer be required or appropriate. If the circumstances changed significantly, he acknowledged that the Sign, as a Discretionary Use, might not be appropriate at any Height.

[12] With respect to the separation requirement between Signs, Mr. Murphy stated that a development permit that remains in effect had been approved for the subject site in 1983. He argued that this existing permit should have been taken into account by the City when it granted the Appellant's neighbour a development permit to erect a Sign. The Sign to the north has yet to be built, and, if the separation requirement poses a problem for the Appellant, it will also be prohibitive for the Appellant's neighbour to the north.

ii) Position of the Development Officers, Mr. J. Folkman & Mr. I. Welch

[13] The Development Officers addressed the separation distance issue and advised that the neighbour's development was permitted because the application did not make any reference to a Sign from the south. They stated that, at the time of that application, the City did not possess modern measurement tools and had to rely largely on the information provided by the Applicant.

[14] They further stated that, although the City has not previously enforced the Signage provisions of the Calgary Trail Land Use Study, it has not forfeited its right to do so at its discretion. According to the Development Officers, digital Signs are more intensely scrutinized due to their potential impact on the surrounding neighbourhood.

[15] In response to questions regarding the Study's status as a statutory plan, the Development Officers explained that, although the Study would not meet the definition of Statutory Plan in the *Municipal Government Act*, it would meet the definition contained in the *Edmonton Zoning Bylaw*. The *MGA* takes precedence, but the Development Authority is obligated to follow the direction of City Council as defined in the *EZB*.

[16] Finally, the Development Officers addressed the Height variance by referring to a photograph attached to their written submissions and asserting that the Sign is sufficiently visible from the road at its current dimensions. This was taken into account in refusing the development permit application.

iii) Rebuttal of the Appellant

[17] In rebuttal, Mr. Murphy made reference to the photograph relied upon by the Development Officers and noted that it does not show the Sign from a driver's perspective. Being a Google Street View image, it was taken from a roof-top mounted camera, a more elevated position than a normal driver's viewpoint.

[18] With respect to the Calgary Trail Land Use Study's status as a Statutory Plan, Mr. Murphy stated that whether the Development Officers feel constrained by the *EZB* or not is irrelevant because the Board is bound by the definition contained in the *MGA*.

[19] He further stated that the Development Authority was speaking against digital Signs generally, a position that does not follow the specific direction of Council in the *Edmonton Zoning Bylaw* or the *Calgary Trail Land Use Study*.

[20] To the extent that the Board has concern for the separation distance between the two Signs, Mr. Murphy explained that it is the neighbour to the north's Sign that cannot be built.

Decision

[21] The Appeal is ALLOWED, and the decision of the Development Authority is REVOKED. The development is GRANTED, subject to the following conditions:

- i) The permit will remain valid for a period of five years; and
- ii) Should, at any time, Transportation Services 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 Services.

[22] In granting the development, the following variance to the Edmonton Zoning Bylaw is allowed:

- i) a variance of 1.14 metres with respect to the Height of the Sign, allowing it to exceed the maximum of eight metres stipulated by Section 59F.3 of the *EZB*.

Reasons for Decision

[21] The proposed development is a Discretionary Use in the CHY Highway Corridor Zone.

[23] The Board finds that the variance in Height is justifiable. Although the Sign is oriented towards Gateway Boulevard, it is separated from Gateway Boulevard by a berm built by the City in approximately 1985. This berm has increased the grade of the adjacent property and significantly impacted the preexisting sightlines to the proposed Sign from the roadway.

[24] The Board notes that a five-year termination condition has been imposed on the proposed development. This condition will require the Appellant to return for a further development permit in five years, at which time the development will be reassessed based on the prevailing circumstances. Should the berm have to be eliminated or reduced, then, as the Appellant has acknowledged, the Height variance will no longer be justified or appropriate.

[25] The Development Authority refused the proposed development because of a deficiency in the required 300 metres of separation between the Appellant's Sign and a Sign to the north for which a permit has already been issued. The Sign to the north has not been built, and, according to the Appellant, using the logic of the Development Authority, that Sign would similarly be in violation of the separation distance requirement because of its proximity to the Appellant's Sign and, according to its conditions of approval, cannot be built. Therefore, the proposed development is in compliance with the separation distances prescribed by the *EZB*.

[26] The Board accepts the Appellant's submission that a variance to separation distance is not currently required.

[27] However, the Board notes that the legal status of the sign to the north is not before the Board in this appeal. It will be up to the Sustainable Development Department and perhaps this Board in the future to determine whether a variance is necessary in the event that situation arises. However, if the Board's interpretation on this point is incorrect and a variance is required for the proposed development, the Board would grant the variance of 54 metres in the required 300-metre separation distance prescribed by section 59F.3(6)(e) of the Edmonton Zoning Bylaw.

[28] The decision of the Development Authority is also based on an alleged inconsistency with the Calgary Trail Land Use Study. Section 3.4(b) of the Study 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 freestanding billboards; and
- iii) improving directional Signage to major facilities such as hospitals, University, Downtown, and Government Centre.

Through information received in the business survey and through visual inspection of the corridor, advertising Signage, particularly older Signage, is perceived by many to be unattractive.

[29] The Board does not accept the Development Authority's contention that the proposed development is in fact counter to the Calgary Trail Land Use study.

[30] Further, the Calgary Land Use Study is not a Statutory Plan within the definition of the Municipal Government Act. Section 616(dd) of the MGA defines a statutory plan as "an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4". The Calgary Trail Land Use Study does not meet this definition. Not only is it not a Statutory Plan within the meaning of the MGA, it is not a Bylaw of the City of Edmonton either, having been approved by Council resolution. Section 687(3) of the MGA sets out the documents that this Board must comply with and does not list any document class that would include a document such as the Calgary Trail Land Use Study.

[31] Finally, the Board is satisfied that the proposed development, with the conditions applied, will not interfere with the use, enjoyment or value of neighbouring properties, nor will it affect the amenities of the neighbourhood.

Mr. N. Somerville, Presiding Officer
Subdivision and Development Appeal Board

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 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*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
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.