



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: February 10, 2017
Project Number: 232579251-001
File Number: SDAB-D-17-020

Notice of Decision

- [1] On January 26, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on **December 28, 2016**. The appeal concerned the decision of the Development Authority, issued on December 9, 2016, to approve the following development:

To construct a Semi-detached House with front entrances, fireplaces, rear uncovered decks (irregular shape) & to demolish an existing Single Detached House & rear detached Garage.

- [2] The subject property is on Plan 8435ET Blk 4 Lot M, located at 9607 - 77 Avenue NW, within the (RF3) Small Scale Infill Development Zone. The Mature Neighbourhood Overlay and the Ritchie Neighbourhood Improvement Plan / Area Redevelopment Plan apply to the subject property.

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

- A copy of the Ritchie Neighbourhood Improvement Plan / Area Redevelopment Plan;
- A copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- The Development Officer's written submission;
- The Respondent's written submission;
- A community consultation submitted by the Respondent;
- An e-mail in opposition to the proposed development from an affected property owner; and
- Two on-line responses: One from an affected property owner that is neutral to the proposed development and an affected property owner that is in support of the proposed development.

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

Summary of Hearing*i) Position of the Appellant, Mr. J. Wong:*

- [7] Mr. Wong discussed the proposed development with his neighbours and decided to file an appeal because of the impact that it would have on the ongoing parking issues in the neighbourhood.
- [8] In his opinion, the photographs of street parking submitted by the Respondent do not accurately reflect the actual situation. The photographs of street parking along 77 Avenue and the shopping centre parking lot were taken during the daytime hours when most residents are away at work. The parking situation is much worse during the evening hours.
- [9] The Ritchie Market is currently under construction and when it opens, there will be a further strain on parking in the neighbourhood.
- [10] He conceded that the proposed double garages for each of the Semi-detached Units will help to alleviate some of the parking concerns. However, it has been his personal experience that having a two-car garage does not ensure that two vehicles will be parked on-site. It is also the norm for most families to have more than two vehicles.
- [11] Mr. Wong advised the Board that street parking is not permitted on the north side of 77 Avenue and only permitted on one side of the street, north of 76 Avenue.
- [12] Some residents park illegally on the north side of 77 Avenue because of the severe shortage in parking.
- [13] Replacing a single family house with a multi-family development will exacerbate the existing parking problems in this neighbourhood.
- [14] He expressed a concern that approval of this development will open the door for the development of more Semi-detached Houses in this neighbourhood.
- [15] The Appellant provided the following responses to questions from the Board:

- a) The proposed Semi-detached House is too wide for the Lot.
- b) Even though the proposed development has the required amount of parking and complies with the parking regulations it does not meet the reality of the situation.
- c) His primary concern is not the deficiency in the Site Width but rather the creation of two residences to replace one single family residence.
- d) He acknowledged that the proposed development complies with all of the development regulations except for Site Width but reiterated his concern about the parking situation in this neighbourhood.

ii) Position of the Development Officer, Mr. B. Liang:

- [16] A Single Detached House constructed with the same dimensions as the proposed Semi-detached House on this lot would be considered a Permitted development.
- [17] The proposed Semi-detached House complies with all of the Height, Setback and Site Coverage requirements of the RF3 Zone and the Mature Neighbourhood Overlay regulations.
- [18] Most of the lots in this neighbourhood are similar in size to the proposed lot.
- [19] Four off-street parking spaces will be provided inside a rear mutual detached Garage that will be accessed from the rear Lane.
- [20] The minimum Site Width requirement was established to ensure that a Semi-detached House of a marketable size could be constructed on the lot to comply with the required Setbacks and parking regulations. He indicated it was a “guide” for developers to show if it cannot meet the Site dimensions, it potentially will not comply with the development regulations.
- [21] In this case all of the development regulations except Site Width were met and that is why he used is discretion to grant the variance and approve the development.
- [22] On street parking restrictions were not considered in his review.

[23] A Single Detached House with a Secondary Suite would be approved on this site as a Permitted Use and it would have the same impact on Density as the proposed development.

iii) *Position of the Respondent, Mr. J. Martins, Architect, representing the Respondent, Mr. S. Khatri:*

[24] He made every attempt to ensure that the proposed development complied with all of the development requirements of the *Edmonton Zoning Bylaw*.

[25] Additional on-site parking will be available between the rear wall of the detached garages and the rear lane.

[26] Mr. Khatri contacted six neighbours and three have provided written support for the proposed development. One neighbour indicated that they had some concerns with the development regulations but not this specific development.

iv) *Rebuttal of the Appellant*

[27] Mr. Wong indicated that he had nothing to add in rebuttal.

Decision

[28] That the appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority.

[29] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:

1. The minimum required Site Width of 13.4 metres per section 140.4(3)(b) is varied to permit a deficiency of 0.46 metres, thereby decreasing the minimum Site Width to 12.94 metres.

Reasons for Decision

[30] Semi-detached Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone.

[31] The proposed development complies with all of the development regulations pursuant to the (RF3) Small Scale Infill Development Zone and the Mature Neighbourhood Overlay with the exception of the minimum required Site Width.

- [32] The Board has granted the required variance in Site Width in part because the Appellant did not provide relevant planning reasons to persuade the Board that allowing the variance would have an adverse impact on the neighbourhood.
- [33] The Appellant stated that his main reason for filing the appeal was based on parking problems in this neighbourhood and that he did not have a concern with the variance required in the minimum required Site Width.
- [34] The Board accepts the evidence provided by the Development Authority that the location of the proposed Semi-detached House will enhance the opportunity to use transit and active transportation because of the close proximity of public transit and commercial development.
- [35] The Board notes that the Respondent completed community consultation, even though it was not a statutory requirement, and provided three signatures of support from affected neighbours.
- [36] The Board notes the receipt of one letter of objection. However, the comments provided addressed overall neighbourhood parking issues and *Edmonton Zoning Bylaw* regulations rather than concerns regarding the deficiency in the minimum required Site Width.
- [37] Based on the above, the Board finds that granting a variance of 0.46 metres in the minimum required Site Width 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Peterson, Mr. S. Laperle, Ms. D. Kronewitt Martin

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 NW, 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 NW, 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.



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Date: February 10, 2017
Project Number: 236952179-001
File Number: SDAB-D-17-021

Notice of Decision

- [1] On January 26, 2017, the Subdivision and Development Appeal Board (“the Board”) heard an appeal that was filed on **December 27, 2016**. The appeal concerned the decision of the Development Authority, issued on December 15, 2016, to approve the following development:

To operate a Major Home Based Business - Massage Therapist (SYLVIE MAINGUY'S MASSAGE THERAPY), expires December 15, 2021.

- [2] The subject property is on Plan 0221057 Blk 19 Lot 28, located at 2048 - Brennan Crescent NW, within the (RSL) Residential Small Lot Zone. The Lewis Farms Area Structure Plan and the Breckenridge Neighbourhood Structure Plan apply to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Lewis Farms Area Structure Plan and the Breckenridge Neighbourhood Structure Plan;
 - A copy of the Development Permit application with attachments and the approved Development Permit;
 - The Development Officer’s written submission; and
 - The Respondent’s written submission.

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

The Presiding Officer advised the parties in attendance that the hearing start time was delayed because the Appellant did not show and attempts had been made, without success, to contact the Appellant, Mr. Wang.

The Board reviewed Mr. Wang's written reasons for appeal which outlined concerns regarding parking, safety and impact on property values in this residential neighbourhood.

Based on the above, the Board proceeded with the hearing based on the written reasons provided by Mr. Wang when he filed his appeal on December 27, 2016.

Summary of Hearing

i) Position of the Development Officer, Ms. H. Vander Hoek:

[7] It was determined that there are no valid planning reasons to deny a Development Permit to operate a Major Home Based Business from this location.

[8] It was her opinion that the conditions imposed on the development permit will address the concerns of the Appellant.

[9] It was determined that the proposed business would operate in the basement of this house. However, there was no record of a Development Permit being issued for the basement development. The Applicant applied for a Development Permit and it was issued as a Class B Development.

[10] There are two parking spaces available inside the Garage and two on the Driveway, which exceeds the *Edmonton Zoning Bylaw* requirement of three on-site parking spaces.

[11] There will be no walk-in appointments and no appointments will overlap.

[12] There will be up to five client visits per day of operation and the business will only operate on Tuesdays and Saturdays.

[13] Through her review she determined that the Major Home Based Business is reasonably compatible and issued the Development Permit.

ii) Position of the Respondent, Ms. S. Mainguy

[14] Ms. Mainguy is a Registered Massage Therapist who specializes in treating sports injuries.

[15] The majority of her clients are professionals.

- [16] She operated a Home Based Business in Grande Prairie for over five years without any problems.
- [17] She has been working in clinics since moving to Edmonton and some of her clients encouraged her to open a Home Based Business to provide more convenient access.
- [18] She plans to treat up to 5 clients per day on Tuesdays and Saturdays only because she is currently attending school.
- [19] All clients are by appointment only, no walk-in clients. She does not advertise and only treats existing clients, family, friends, and referred clients. She does not want strangers coming to her house. She schedules her appointments to allow 15 to 30 minutes between clients.
- [20] Parking is available on the Driveway and some of her clients live close enough to walk to her house.
- [21] Traffic is heavy in this neighbourhood because of the close proximity to a golf course. It was her opinion that the proposed development will not create any further traffic problems.
- [22] Ms. Mainguy provided the following responses to questions:
- a) She owns two personal vehicles that are parked inside the Garage and there are two parking spaces available on the Driveway.
 - b) She does not have any plans to hire employees or expand her business at this time.
 - c) Both of her adjacent neighbours provided signatures of support.
 - d) The Appellant has never contacted her to discuss her business.
 - e) There are no parking restrictions on Brennan Crescent.
 - f) On-street parking is available because of the configuration of the houses across the street.
 - g) The conditions imposed on the Development Permit are acceptable.

Decision

- [23] That the appeal is **DENIED** and the decision of the Development Authority **CONFIRMED**. The development is **GRANTED** as approved by the Development Authority, subject to the following **CONDITIONS**:

1. The business owner must live at this site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building.
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 centimetres (8 inches) by 30.5 centimetres (12 inches) in size located on the Dwelling.
3. 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.
4. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. There shall be no more than 5 visits associated with the business per day.
6. Hours of operation must be between 2:00 p.m. to 7:00 p.m. on Tuesdays and 10:00 a.m. to 3:00 p.m. on Saturdays.
7. Clients visit must be by appointment only and appointments shall not overlap.
8. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business.
9. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
10. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighbourhood.
11. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
12. This Development Permit may be cancelled at any time if the Home based Business as stated in the Permit Details changes.
13. This approval is for a five year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on February 10, 2021.

Reasons for Decision

- [24] A Major Home Based Business is a Discretionary Use in the RSL Residential Small Lot Zone.

- [25] The proposed Major Home Based Business complies with all of the *Edmonton Zoning Bylaw* regulations for a Major Home Based Business.
- [26] The Board accepts with the evidence provided by the Development Authority that the proposed Major Home Based Business is reasonably compatible with the neighbourhood and concurs with the conclusions of the Development Authority for the following reasons:
- a) There will be no non-resident employees.
 - b) There will be up to 5 clients per day of operation, which is the scale typical of a Major Home Based Business.
 - c) All clients will be by appointment only, and no appointments will overlap.
 - d) The business will only operate on Tuesdays and Saturdays.
 - e) Three parking spaces are required and two parking spaces will be provided in the Garage and two parking on the driveway.
 - f) There will be no outdoor business activities or storage.
 - g) The Development Permit will expire in 5 years.
- [27] Even though there was no statutory obligation to provide community consultation, the Respondent contacted her neighbours and provided written support from the most affected neighbours who reside north and south of the subject site.
- [28] The Board finds that the conditions imposed on the approved Development Permit will mitigate the overall impact of the proposed business on the neighbourhood.
- [29] The Appellant did not provide any valid planning reasons to persuade the Board to deny the application for a Major Home Based Business at this location.
- [30] Based on the above, the Board finds that the proposed development is reasonably compatible with surrounding developments.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Peterson, Ms. S. LaPerle, Ms. D. Kronewitt Martin

Important Information for the Applicant/Appellant

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 - 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 NW, Edmonton.

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Date: February 10, 2017
Project Number: 230469969-001
File Number: SDAB-D-17-022

Notice of Decision

- [1] On January 26, 2017, the Subdivision and Development Appeal Board (“the Board”) heard an appeal that was filed on **November 23, 2016**. The appeal concerned the decision of the Development Authority, issued on November 18, 2016, to refuse the following development:

To install one (1) Freestanding Minor Digital Off-premises Sign (14.6 metres by 4.3 metres Digital panel facing South, and Static panel facing North); and to remove an existing Freestanding Off-premises Sign on 2920-101 Street, existing Freestanding Off-premises Signs on 2303 Gateway Boulevard NW, and existing Freestanding Off-premises Sign on 2950 Calgary Trail NW as shown on plans submitted. (PATTISON - KBR CANADA LTD.)

- [2] The subject property is on Plan 0923583 Blk 2 Lot 3B, located at 2920 - 101 Street NW, within the (IM) Medium Industrial Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- A copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submission;
 - A Transportation Services response submitted by the Development Officer; and
 - The Appellant’s written submission.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – A Google map of the surrounding area.

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.

Summary of Hearing*i) Position of the Appellant, Mr. J. Murphy, Ogilvie LLP:*

- [8] This Development Permit application is to replace one existing Billboard Sign of the same size with a new Digital Sign on the north end of the subject Site. The proposed Sign is Digital on one side and a paper copy on the other side. In addition, three existing Billboard Signs in close proximity to this Site will be removed before the proposed new Sign is installed.
- [9] Minor Digital Off-premises Signs are a Discretionary Use in the IM Medium Industrial Zone and must comply with the regulations found in Schedule 59G of the *Edmonton Zoning Bylaw*.
- [10] The proposed Freestanding Minor Digital Off-premises Sign does not require any variances and meets all of the requirements of the Sign Schedule and the IM Medium Industrial Zone.
- [11] The subject Site is located in an industrial manufacturing and refining area.
- [12] The Development Officer's first reason for refusal stated that the proposed Sign is contrary to section 3.4.b.ii of the Calgary Trail Land Use Study ("the *Study*").
- [13] Section 3.4, *General Urban Design Policies* of the *Study* encourages, among other things, improvements to Signage.
- [14] The proposed development will improve Signage in the area by replacing four old Billboard Signs with a new Digital Sign.
- [15] Mr. Murphy referenced section 3.4.b.ii of the *Study*, which states that:

Greater attention shall be given to improving the location, siting, Signage comprehensibility and design of signage in the corridor by discouraging the use of portable signs and freestanding billboards.

In his view, the Development Officer used this section out of context in this case.

- [16] This is an industrial area and the *Study* allows Industrial Uses along Calgary Trail.
- [17] The *Study* is not a Statutory Plan pursuant to the *Municipal Government Act*. Therefore, the Board is not bound by the *Study*. It was his opinion that the *Study* contains competing goals and that the Development Officer improperly relied upon it to refuse this application.
- [18] Two previous decisions of the Board were referenced to outline the reasons for approving two similar Sign applications in this area. One of the reasons was that the *Study* is not a Statutory Plan and the other decision addressed the issue of mixed goals contained in the *Study*.
- [19] An aerial photograph was referenced to illustrate the location of the existing Signs that will be removed. The proposed new Sign will move from the south end of the subject Site to the north end.
- [20] Photographs were used to provide a description of the Signs to be removed and the proposed new location.
- [21] Mr. Murphy addressed the second reason for refusal and in his view; the proposed Sign does not dominate this Site because the Lot is more than 4 acres in size and is located in an industrial area. The proposed Sign is the same size and shape as the existing Sign that will be replaced.
- [22] An aerial photograph of the subject Site was referenced to illustrate that the existing Sign, located in the southeast corner of the subject Site, is not out of scale for this Site or the industrial area.
- [23] An aerial photograph was referenced to illustrate that the proposed Sign will be separated by two lanes of roadway, a grass boulevard and the railway line. In his view, there will not be a distraction to drivers and the proposed Sign will not adversely impact the built environment.
- [24] He referenced section 59.2 of the *Edmonton Zoning Bylaw* and indicated that this section requires the Development Officer and Transportation Services to be satisfied that a Sign will not obscure a driver decision point.
- [25] He referenced an e-mail dated October 31, 2016 from Transportation Services to the Development Officer stating that they had no objections to the location of the proposed Minor Digital Off-premises Sign.

[26] He referenced section 59.2(6) that states:

For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone.

[27] He referenced section 59.2(7) that states:

[...] 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.

[28] He indicated that this Site is located in the IM Medium Industrial Zone, there are no Statutory Plans that apply and Transportation Services has not identified any traffic conflict points.

[29] Section 59.2(7) also allows the Development Officer to request application revisions to mitigate any impacts of a proposed Sign and a request was not made in this case.

[30] He reiterated his opinion that replacing old Signs with a new Sign is in keeping with the *Study*.

[31] Mr. Murphy provided the following responses to questions:

- a) The Development Permits for the four existing Signs have lapsed and they will all be removed.
- b) If the proposed Sign is approved, the four existing Signs will be removed before the new Sign is installed. He would be agreeable to a condition being imposed on the approval.
- c) The proposed Sign is automatically controlled to react to ambient light conditions.
- d) Transportation Services can require an owner to shut down a Digital Sign if it does not adhere to the ambient light regulations.
- e) The proposed Sign is Digital on one side and a vinyl poster board on the other side.
- f) The sign is being relocated to the north end of the Site at the landlord's request and as a result it will be located farther away from a driver decision point. It was his estimation that the Sign will be located approximately 150 metres from a driver decision point.

- g) If the Development Officer disagrees with the opinion of Transportation Services regarding the location of the proposed Sign then an adjournment will be requested in order to obtain an independent Traffic Study.
- h) The three conditions recommended by the Development Officer are acceptable.

ii) *Position of the Development Authority, Ms. B. Noorman and Mr. H. Luke*

- [32] Mr. Luke acknowledged that there are fundamental differences in the interpretation of section 3.4 of the *Study*. In his opinion, the intent of this section is to ensure that improvements are made to the main corridor and entry way into the City. The *Study* is relied on in the absence of prohibiting Off-premises Signs in this corridor.
- [33] Section 3.4.b.ii supports the cleanup of old Billboard Signs and is meant to encourage Business Identification Signs.
- [34] In his opinion, the proposed Sign is extremely large and an aerial photograph does not illustrate the impact of the size of the Sign on passing motorists. Display on a Digital Sign changes every 6 seconds and can distract motorists.
- [35] The size of the proposed Sign dominates the Site and the scale of the Sign will dominate the view of motorists as they travel north on Gateway Boulevard.
- [36] The Applicant was not given an opportunity to revise the application based on past experiences with other Development Permit applications.
- [37] Sustainable Development does not disagree with the findings of Transportation Services. The application was reviewed using different parameters. It was their opinion that a Digital Sign of this size will capture the attention of motorists merging off 23 Avenue onto Gateway Boulevard which could cause some distraction.
- [38] The Development Officer has to review an application based on the regulations contained in the *Edmonton Zoning Bylaw* and other Statutory Plans. Although the *Study* is not a Statutory Plan under the *Municipal Government Act* it was still adopted by resolution of City Council and is used when reviewing this development application.
- [39] Mr. Luke and Ms. Noorman provided the following responses to questions:
 - a) Even though the *Study* is not a Statutory Plan it should be considered by the Board.
 - b) The proposed Sign does not require any variance to the development regulations but it is a Discretionary Use in the IM Zone.

- c) The proposed Sign is not compatible with the built environment because even though it is located on an industrial site, the Site is located on a major corridor into the City. The size of the proposed Sign does not compliment the Gateway Corridor or the buildings on Site.
- d) It was acknowledged that the proposed Sign complies with the maximum allowable size for a Freestanding Minor Digital Off-premises Sign.
- e) Relocating the Sign further north will have more of an impact on driver distraction.
- f) In their estimation, the merge lanes are located approximately 130 metres north of the subject Site.
- g) A Sign of this size would be more appropriately located on a Freeway.
- h) The intent of the *Study* is to cleanup old Signage and encourage Business Identification Signs.
- i) The *Study* is an old document that was initiated in the 1960s and does need to be amended.
- j) An On-premises Sign for the business would probably be viewed differently.

vi) *Rebuttal of the Appellant*

- [40] The 23 Avenue off ramp conjoins with Gateway Boulevard north bound but is not a merge where a driver decision point would occur.
- [41] A Google aerial map of the Site was shown (“Exhibit A”) to demonstrate the merge point of Gateway Boulevard. Mr. Murphy indicated that illustration showed that the proposed Sign will be located north of the merge point.
- [42] He indicated that steps can be taken by the City of Edmonton to prohibit Signs along Gateway Boulevard if that is the wish of City Council.
- [43] He reiterated that the proposed Sign is smaller than the maximum allowed under the *Edmonton Zoning Bylaw*, the proposed Sign is not located at a driver decision point and it is not excessive in scale in relation to the subject Site.
- [44] There has to be a solid land use planning reason to refuse an application for a Discretionary Use that complies with all of the requirements of the *Edmonton Zoning Bylaw* and in this case no solid planning reasons were identified.

Decision

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

1. All of the existing Signs identified by the Applicant in the plans submitted, located on 2920 – 101 Street NW, 2303 Gateway Boulevard NW, and 2950 – Calgary Trail NW must be removed prior to the installation of the proposed Sign.
2. The Development Permit will expire in 5 years from the date of approval (February 10, 2022).
3. 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.
4. 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;
5. The proposed Sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

Reasons for Decision

[46] A (Freestanding) Minor Digital Off-premises Sign is a Discretionary Use in the (IM) Medium Industrial Zone.

[47] The proposed development meets all of the development regulations for Signs under *Edmonton Zoning Bylaw*. The sole issue before the Board was whether or not the proposed Discretionary aspect of the proposed Sign is reasonably compatible with the area.

[48] The Board finds that the proposed Freestanding Minor Digital Off-premises Sign is reasonably compatible with the neighbourhood based on the following:

- a. The first reason of refusal deals with the interpretation of the Calgary Trail Land Use Study (“the *Study*”) that was adopted by a City Council resolution on September 11, 1984. Specifically, section 3.4.b.ii of the *Study* states that:

Greater attention shall be given to improving the location, siting, Signage comprehensibility and design of signage in the corridor by discouraging the use of portable signs and freestanding billboards.

However, the Board notes that the *Study* is not a Statutory Plan within the definition of the *Municipal Government Act* and therefore it is not binding on the Board. The Board has determined that some of the policies of the *Study* are conflicting and that some of the policies contained in the *Study* support the proposed development, specifically the removal of four old existing Freestanding Off-premises Signs and upgrades an old existing Sign.

- b. Section 59.2(6) of the *Edmonton Zoning Bylaw* states that:

For all Sign Applications, the Development Officer shall have regard for the scale and architectural character of the building and the land use characteristics of surrounding development. The Development Officer shall refuse any Sign Application that may adversely impact the amenities or character of the Zone.

While the *Study* is not a Statutory Plan, the Board sees no reference to the conclusion reached by the Development Authority that Signs meant Business Identification Signs.

The Board finds that the proposed Sign will not impact the amenities or character of the Zone because the Site is in excess of 4 acres in size, it is located in an Industrial Zone on the east side of a railway right-of-way, and there is no residential development located in close proximity to the subject Site. The Board finds that the proposed Freestanding Off-premises Minor Digital Sign is consistent with an industrial location.

- c. Section 59.2(7) of the *Edmonton Zoning Bylaw* states:

[...] 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.

After reviewing a Google aerial map of the Site, the Board finds that the merge point on Gateway Boulevard is located north of the proposed location of the proposed Sign and is therefore not a driver decision point that would be affected by the proposed development. The Board further notes that Transportation Services had no objection to the proposed location of the Sign. Therefore, the Board finds that the proposed Sign will not be a distraction to drivers and will not adversely impact the built environment.

- [49] The Board notes that if City Council wanted to eliminate Freestanding Digital Signs along the Calgary Trail corridor, they could have done so as they did in the civic centre area and other areas by prohibiting Minor Digital On-premises Off-premises Signs and Minor Digital Off-premises Signs, under Schedule 59F.3(6)(a) of the *Edmonton Zoning Bylaw*.
- [50] There were no letters of objection and no one attended the hearing in opposition to the proposed development.
- [51] The Board finds that the proposed development is in complete compliance with the *Edmonton Zoning Bylaw* and is not at odds with any Statutory Plan as defined within the *Municipal Government Act*. As a result, and given the Board's finding that the proposed development does not constitute a Use that is incompatible with the neighbouring land Uses, the appeal is allowed and the development is granted.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

Board members in attendance: Mr. N. Somerville, Mr. A. Peterson, Ms. S. LaPerle, Ms. D. Kronewitt Martin

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 NW, 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 NW, 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.