



**Subdivision and
Development Appeal Board**

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DATE: January 23, 2015
APPLICATION NO: 149831746-001
FILE NO.: SDAB-D-14-310

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated November 18, from the decision of the Development Authority for permission to:

Install (1) Freestanding Minor Digital Off-premises Sign (IMPARK PARKING LOT)

on Lot C, Plan 4686S, located at 10030 – 103 Avenue NW, was heard by the Subdivision and Development Appeal Board at its hearing held on December 3, 2014 and January 8, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to install (1) Freestanding Minor Digital Off-premises Sign (IMPARK PARKING LOT), located at 10030 – 103 Avenue NW. The subject site is zoned CCA Core Commercial Arts Zone. The development permit application was refused because of a deficiency in the minimum required separation distance from any other Digital Sign greater than 8.0 square metres or Off-premises Signs, the architectural design does not extend to the base of the Sign, and because Landscaping has not been proposed.

SUMMARY OF HEARING (CONTINUED):

The Board notes that a written submission was received from the Development Authority on November 25, 2014, a copy of which is on file.

The Board heard from Mr. James Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising, who provided a detailed written submission, including photographs and excerpts from the Edmonton Zoning Bylaw, marked Exhibit "A". Mr. Murphy referenced his written submission and provided the following information in support of the appeal:

1. Digital Signs are a listed Use in the CCA Core Commercial Arts Zone because they provide a more vibrant appearance and are more attractive than Freestanding billboard Signs which are not permitted.
2. The use of the term "freestanding" is simply a descriptor for the proposed Sign. The Development Officer acknowledged this in the second paragraph of the reasons for refusal by not capitalizing "freestanding".
3. Per Schedule 59F.1 of the Edmonton Zoning Bylaw, the zones involved are business zones that encourage the use of Signs.
4. Schedule 59F.3(6)(a) states Digital Signs are prohibited in the civic centre area bounded by 105 Avenue to the north, the North Saskatchewan River Valley to the south, 97 Street to the east, and 100 Street to the west. The proposed Sign is located outside of this area.
5. The proposed Sign is approximately 27 square metres in size which is half of the maximum allowable Sign Area.
6. Separation distance was the principal reason for refusal and it was not valid because each of the three Signs cited as within the required separation distance was either being taken down by the Appellant or in place illegally.
7. A Digital Sign owned by the Appellant has already been removed from its former location in the nearby Staples site.
8. Two of the existing three Signs located within the minimum required separation distance do not have valid development permits and he believes they will be removed.
9. The third Sign cited by the Development Officer is an existing Fascia Sign owned by the Appellant situated on a City building. It will be removed if the proposed Sign is approved.
10. Further, an existing advertising kiosk on the subject site is owned by the Appellant will also be removed if the proposed sign is approved.

SUMMARY OF HEARING (CONTINUED):

11. In effect, the proposed Sign will replace five old Signs and will comply more closely with the requirements of the City.
12. The proposed Sign will be located on a corner. Transportation Services has reviewed it and the required cone of vision and has no objection subject to the imposition of several conditions. Pattison Outdoor Advertising is amenable to those conditions.
13. Regarding Landscaping, the pole of the proposed Sign will be clad entirely to the base and will be more attractive than what currently exists.
14. The subject site is not located within close proximity to a residential zone.
15. If approved, the permit will be time limited to five years which will allow a review if the situation changes.
16. The General Purpose of Section 55.1 of the Edmonton Zoning Bylaw states that the intent of Landscaping regulations is to contribute to a reasonable standard of liveability and appearance for developments, from the initial placement of the Landscaping through to its mature state, to provide a positive overall image for Edmonton and to encourage good environmental stewardship. The Appellant's proposal is reasonable with respect to Landscaping.
17. The proposed development as depicted in the rendering in the photos at Tab 9 complies with the Landscaping regulations in Sections 55.1 and 55.2(1) and the Landscaping definition under Section 6.1(55), specifically subsection (c).
18. In his opinion, a condition requiring the provision of Landscaping under Section 55.2(2) was not appropriate. Section 55.2(2) does not apply because the proposed development, a sign, will not substantially enlarge or increase the existing development, a vacant parking lot.
19. He reiterated that the list of Uses in the CCA Zone infers that Signs are suitable developments in this Zone.

Mr. Murphy provided the following responses to questions:

1. Five existing Signs, including billboard Signs, will be removed if the proposed Sign is approved.
2. The proposed Sign is a replacement for the Digital Sign that was recently removed from the site of the previous Staples building.
3. Any of the existing Signs that are controlled by Pattison Outdoor Advertising will be removed immediately.
4. The proposed Sign will be serviced by underground power.

SUMMARY OF HEARING (CONTINUED):

5. The Digital Sign that was located on the Staples site was approved prior to the revisions made to the Edmonton Zoning Bylaw and was subject to the regulations for billboard Signs in place at the time of its approval.
6. Pattison Outdoor Advertising is amenable to the imposition of a condition requiring that the entire pole be clad for 360 degrees with a brushed aluminum type finish, similar to the drawing at Tab 9.
7. His client is also amenable to the imposition of a condition requiring the removal of the existing kiosk Sign and the Fascia Off-premises Sign on a neighbouring City building.
8. The proposed Sign with cladding would comply with the advisement referencing Section 4.3.9 of the Capital City Downtown Plan contained in the Permit Refusal by the Development Officer.

The Board then heard from Ms. Noorman, representing the Sustainable Development Department, who provided the following information:

1. Pursuant to Section 910.5, Minor Digital Off-premises Signs are a Discretionary Use in the CCA Core Commercial Arts Zone.
2. As neither Freestanding On-premises Signs, nor Freestanding Off-premises Signs, are listed Uses in the CCA Zone, no Freestanding Digital Signs or Freestanding non-Digital Signs are permitted in the zone. The proposed development is simply not a listed Use in this Zone.
3. All three descriptors (Digital, Off-premises and Freestanding) must be listed Uses in the Zone.
4. Schedule 59F.3 does distinguish between Freestanding Signs and Fascia signs.
5. The definition for a “Minor Digital Off-premises Sign” does not include “Freestanding Signs”.
6. Fascia On-premises Signs and Fascia Off-premises Signs are listed Uses in this Zone. Therefore, a “Minor Digital Fascia Sign” would also be a listed Use.
7. Freestanding Signs are explicitly allowed in other zones within the city. It was therefore her opinion that it was the intent of the CCA Zone not to allow this type of sign in an attempt to improve the appearance of this Zone.
8. There are not many Freestanding Signs located in the downtown core.
9. In her opinion, it was the intent of this Zone not to have any Freestanding Signs, Digital or not.

SUMMARY OF HEARING (CONTINUED):

10. A Digital Sign would only be allowed in this Zone if it was attached to a building and therefore a Fascia Sign.
11. Ms. Noorman made her Refusal based on the number of Signs currently located within the minimum required separation distance from the site of the proposed sign and not on the number of illegal Signs that may be removed at some point in the future.
12. She concurred that if the existing Pattison Signs located in the minimum required separation distance were removed, then the only offending Signs would be the two non-permitted Signs and that she would not have refused the development permit based on the minimum required separation distance.
13. She did not agree that Landscaping is restricted to architectural details on the proposed Sign.
14. The new Sign design submitted by the Appellant today was not part of the original application. Transportation Services did not object to the original design, but the “Central Unit” of the Current Planning Branch did have a concern about the proposed landscaping.
15. The proposal contained in tab 9 of the Appellant’s submission is an improvement but it in her opinion more greenery should be provided at the base of the proposed sign.

Mr. Murphy made the following points in rebuttal:

1. The Landscaping requirements have been met. There are no Landscaping regulations specific to Signs.
2. The Development Officer had not properly read the definition of “Landscaping” which lists three factors, one of which is “architectural elements” such as they have proposed. All three listed factors are not necessarily required, the section specifically provides for “any or any combination” of the three factors in the definition.
3. Pattison Outdoor Advertising always intended to clad the sign pole.
4. The Development Officer did not correctly interpret the list of Use Classes in this Zone.
5. The proposed development is a “Minor Digital Off-premises Sign” and there is no regulation that prohibits this type of sign as a “freestanding sign”.
6. “Freestanding” is simply a descriptor and there is no further breakdown in the classification of Minor Digital Signs.

SUMMARY OF HEARING (CONTINUED):

7. Use classifications must be read broadly.
8. The potentially applicable Use Classes are “Freestanding Off-premises Signs” and “Minor Digital Off-premises Signs”. There is no Use Class “Freestanding Digital Off-premises Signs”.
9. The Development Officer is suggesting something that is not in the Bylaw.
10. Nothing in the Zone prohibits the proposed Sign from being “freestanding”.
11. All new downtown Use classes are attempting to restrict the old style billboard signs and encourage the use of larger Digital Signs.

DECISION:

that SDAB-D-14-310 be TABLED to January 8, 2015.

REASONS FOR DECISION:

The Board finds the following:

1. The Board has tabled this hearing in order to obtain a legal opinion on the new issue raised by the additional reason for refusal in the Written Submission of the Development Authority dated November 21, 2104 which was first brought to the attention of the Board and the Appellant on the morning of this hearing: “the CCA Zone does not list Freestanding Off-premises Signs as either a permitted or discretionary use”.

January 8, 2015 Hearing:

MOTION:

“that SDAB-D-14-310 be raised from the table”

SUMMARY OF HEARING (CONTINUED):

At the outset of the hearing, the Presiding Officer reviewed the procedure to be followed and that submissions and evidence would be heard only with respect to the additional reason for refusal that was introduced at the initial hearing on December 3, 2014. Specifically, whether when a proposed development falls within two Use Classes (here Freestanding Off-premises Signs and Minor Digital Off-premises Signs), both Use Classes must be listed Uses in the Zone in order for the application to be heard.

SUMMARY OF HEARING (CONTINUED):

The City representatives asked to also present arguments with respect to Landscaping and the interpretation of the definition in the Edmonton Zoning Bylaw. It was the decision of the Presiding Officer not to allow further submissions on that issue because ample opportunity to present arguments concerning Landscaping was provided at the hearing on December 3, 2014. The Presiding Officer indicated that the Board would only hear submissions with respect to the two Use Class jurisdictional issue set out earlier.

The Board heard from Mr. James Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising. Mr. Murphy referenced his written submission dated December 15, 2014 and made the following points:

1. The Development Authority is making a novel argument which is not consistent with its prior practice as shown by the examples cited in his written submission. Previously analogous cases assessed and ultimately refused proposed Digital Signs as Discretionary Uses.
2. The proposed Sign fits into two Use Classes, Minor Digital Off-premises Sign and Freestanding Off-premises Sign.
3. Section 7.1(3) of the Edmonton Zoning Bylaw governs this situation and provides that one Use Class must be chosen for the proposed Sign.
4. Two decisions reproduced in his written submission emphasize that a single most appropriate use class should be determined: *Rossdale Community League (1974) v. Edmonton (City) (Subdivision & Development Appeal Board)* and *McCauley Community League v. Edmonton (City)*.
5. Here, Minor Digital Off-premises Signs is the most appropriate Use Class because
 - a) it is the strictest Use Class by regulation;
 - b) it was recently carved out of preexisting and more general Use Classes specifically for Digital Signs; and,
 - c) it is more restrictive than the Use Class Freestanding Signs as it is available in fewer Zones.
6. Freestanding Minor Digital Off-premises Signs could have been restricted or eliminated City-wide, by regulation in Section 59 such as the Roof Sign prohibition, or in the CCA Zone by regulation in Section 910, however, this was not done.

SUMMARY OF HEARING (CONTINUED):

The Board then heard from Mr. Imai Welch, representing the Sustainable Development Department, who provided the following information:

1. Following the hearing on December 3, 2014, a legal opinion was sought that in many aspects agrees with the opinion of Legal Counsel for the Appellant.
2. He agreed that the reasons for refusal were not written properly.
3. He conceded that one Use Class had to be chosen per Section 7.1(3)(b) of the Edmonton Zoning Bylaw and that here the appropriate Use Class for the proposed Sign is the Minor Digital Off-premises Use Class which is a Discretionary Use in this Zone.
4. In response to a question, he stated that he did not intend to introduce a new reason for refusal, but he did want to bring “perspective on the freestanding issue”.

At this point, Legal Counsel for the Appellant objected and stated:

1. The first hearing was adjourned because a novel jurisdictional argument was raised. Therefore, the only issue before the Board today is whether or not the Board has jurisdiction to issue a development permit even though Freestanding Off-premises Signs are not a listed Use in the Zone.
2. The Development Officer has conceded that jurisdictional issue; therefore the hearing should be concluded. The Development Officer was abusing the process by attempting to reargue the merits of the development at this hearing.

Following a brief recess, the Presiding Officer advised that it was the decision of the Board not to hear any additional arguments regarding the merits of the proposed development because both the Appellant and the Development Authority had received full opportunity and had addressed the merits of the decision at the initial hearing held on December 3, 2014. The only issue before the Board at this hearing is the jurisdictional issue with respect to whether when a proposed Sign fits into two Use Classes, both must be listed Uses in the Zone. Here both parties had agreed that when a proposed Sign fits within two Use Classes,

1. The single most appropriate Use Class must be chosen per Section 7.1(3)(b); and,
2. In this case that Use Class is Minor Digital Off-premises Signs, a Discretionary Use in the CCA zone.

Therefore there was nothing more to hear.

SUMMARY OF HEARING (CONTINUED):

The Development Officer reiterated the two original reasons for refusal and his right to exercise discretion and refuse the proposed development.

Mr. Murphy had nothing further to add in rebuttal.

DECISION:

that the appeal be ALLOWED and the development GRANTED, subject to the following conditions:

1. The existing Fascia Off-premises Sign located on the adjacent site to the northeast and the kiosk Sign located on the subject site, both owned by Pattison Outdoor Advertising, shall be removed;
2. The entire supporting pole for the Minor Digital Off-premises Sign must be clad to its base over 360 degrees with a brushed aluminum type finish, similar to the drawing contained in Tab 9 of Exhibit "A", pursuant to Section 55.2(c) of the Edmonton Zoning Bylaw;
3. The permit shall be approved for a term of no longer than 5 years, at which time the Applicant shall apply for a new development permit for continued operation of the Sign;
4. Should Transportation Services determine at any time 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;
5. The owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services 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;
6. The proposed Sign shall be constructed entirely within private property. No portion of the Sign shall encroach over/into road right-of-way.

Advisement:

1. Should the Applicant wish to display video or images with duration shorter than 6 seconds on the sign, a new development application for a Major Digital Sign will be required. At that time, Transportation Services will require a Traffic Safety Assessment of the Sign prior to supporting the application.

REASONS FOR DECISION:

1. The proposed development is a Minor Digital Off-premises Sign, a Discretionary Use in the CCA Core Commercial Arts Zone which, with the conditions imposed above, complies with the regulations of the Edmonton Zoning Bylaw.
2. The proposed development is a Sign with three significant characteristics:
 - a) The Sign Copy may be remotely changed on or off site for message duration greater than or equal to 6 seconds with or without physically or mechanically replacing the Sign face or its components.
 - b) The Sign Copy directs attention to a business, activity, product or service that cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises or Site where the sign is located.
 - c) The Sign is supported independent of a building.
3. There is no Use Class in the Edmonton Zoning Bylaw for “Freestanding Minor Digital Off-premises Sign” that incorporates all three elements. The proposed development fits within two Sign Use Class definitions: Freestanding Off-premises Signs and Minor Digital Off-premises Signs.
4. Section 7.9(3) states that Freestanding Off-premises Signs means any Sign supported independent of a building, displaying Copy that directs attention to a business, activity, product, service or entertainment that cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises or Site where the Sign is displayed.
5. Section 7.9(6) states that Minor Digital Off-premises Signs means any Sign that is remotely changed on or off Site and has a Message Duration greater than or equal to 6 seconds. Minor Digital off-premises Signs incorporate a technology or method allowing the Sign to change Copy without having to physically or mechanically replace the Sign face or its components. The Copy on such Sign directs attention to a business, activity, product, service or entertainment that cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises or Site where the Sign is displayed.

REASONS FOR DECISION (CONTINUED):

6. When a proposed development fits within two or more Use Classes, Section 7.1(3) establishes mandatory guidelines to interpret Use Class definitions and provides in part in Section 7.1(3)(b) “Where a specific use does not conform to the wording of any Use Class definition or generally conforms to the wording of two or more Use Class definitions, the Development Officer may, in his discretion, deem that the use conforms to and is included in that Use Class which he considers to be the most appropriate in character and purpose. In such a case, the use shall be considered a Discretionary Use, whether or not the Use Class is listed as Permitted or Discretionary within the applicable Zone”.
7. The Board notes that the Development Officer conceded that per the guidelines outlined in Section 7.1(3) of the Edmonton Zoning Bylaw, selecting a single Sign Use Class is the proper procedure and that Minor Digital Off-premises Sign is the most appropriate Use Class in this instance.
8. The Board finds that the most appropriate Use Class in character and purpose for the proposed development is Minor Digital Off-premises Sign for the following reasons:
 - a) The Copy on the proposed Sign is fully lit and changes in intensity and color over time. This digital element is a key functional or physical impact characteristic of the proposed Sign.
 - b) The Edmonton Zoning Bylaw was amended in 2011 to introduce new definitions and carve out new Use Classes with stricter regulations specific to new Signs which incorporate this digital element.
 - c) Digital Sign regulations enacted under Schedule 59F which regulate Digital Signs contemplate Freestanding and Fascia structural characteristics. By contrast, Section 59.2(15) of the general Sign regulations prohibits Digital Signs which also possess the structural characteristics of Roof Signs, Projecting Signs or Temporary Signs.
 - d) The Minor Digital Off-premises Use Class is more descriptive and specific to the proposed Sign than the more generic Use Class Freestanding Off-premises Sign.
9. The Board also notes that when a subset of developments with specific attributes which would otherwise fall within a defined Section 7 Use Class are not to be allowed in a particular Zone, they are specifically carved out by an explicit provision within that Zone.

REASONS FOR DECISION (CONTINUED):

10. In the CCA Zone, Subsection 910.5(1) and (2) include six such instances. For example, Section 910.5(2)(d) lists Bars and Neighbourhood Pubs, for less than 200 occupants and 240 square metres of Public Space, as a Permitted Use.
11. There is no comparable specific exclusion in Section 910.5(3)(bb) or elsewhere in Section 910 that Minor Digital Off-premises Signs cannot be “Freestanding”.
12. Schedule 59F.3(6)(a) prohibits Digital Signs in a specific Downtown area. The proposed Sign is outside of this area.
13. Given the Board’s imposition of a condition requiring removal of the two existing Signs controlled by the Appellant set out above, the Board finds that the 200 metre separation distance requirement in Schedule 59F.3 is satisfied. The two other Signs located within the minimum required separation distance are illegal developments which do not have valid development permits.
14. Given the Board’s imposition of a Landscaping condition set out above, the Board finds the proposed Sign meets the Landscaping requirements in Section 55 of the Bylaw which must be reasonable in the context.
15. The Board accepts the Appellant’s interpretation that per the definition of Landscaping in Section 6.1(55) Landscaping requirements may be satisfied by any one, or by any combination, of the three listed items. One of those listed items is (c) architectural elements such as decorative fencing, walls and sculpture.
16. This Minor Digital Off-premises Sign is being erected in a vacant parking lot. In these circumstances, the addition of an architectural element in the form of aluminum type cladding over the entire pole as described above is reasonable and satisfies the General Purpose of the Landscaping regulations in Section 55.1 and the definition of Landscaping in Section 6.1(55) of the Edmonton Zoning Bylaw.
17. The Board notes that Transportation Services has no objections subject to conditions outlined in their Memorandum dated September 24, 2014 and that the Appellant is agreeable to their imposition.
18. The Board received no letters of objection and no one appeared to oppose the appeal.
19. Based on the above, it is the opinion of the Board, that the proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with and affect the use, enjoyment and value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.
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.

Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.



**Subdivision and
Development Appeal Board**

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DATE: January 23, 2015
APPLICATION NO: 160987383-001
FILE NO.: SDAB-D-15-003

NOTICE OF DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

This appeal dated December 2, 2014, from the decision of the Development Authority for permission to:

Construct one (1) Freestanding Minor Digital Off-premises Sign (YELLOWHEAD TRAIL)

on Lot 1, Block 3, Plan 1222066, located at 14950 - Yellowhead Trail NW, was heard by the Subdivision and Development Appeal Board at its hearing held on January 8, 2015. The decision of the Board was as follows:

SUMMARY OF HEARING:

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

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

The Board heard an appeal of the decision of the Development Authority to refuse an application to construct one (1) Freestanding Minor Digital Off-premises Sign (YELLOWHEAD TRAIL), located at 14950 - Yellowhead Trail NW. The subject Site is zoned CHY Highway Corridor Zone. The development permit application was refused because of a deficiency in the minimum required separation distance from an existing Minor Digital Off-premises Fascia Sign and an existing Freestanding On-premises Sign and because the proposed Sign is located within a minimum required Setback.

SUMMARY OF HEARING (CONTINUED):

The Board received a written submission from the Development Officer on December 14, 2014.

The Board heard from Mr. James Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising, who provided a detailed written submission, marked Exhibit 'A' and provided the following information in support of the appeal:

1. The existing Sign has been in place in this location since 2009 without any known complaints.
2. The existing Sign could not be sited as proposed in its 2009 development permit because there is a monitoring well at that location. The original Sign was therefore erected closer to Yellowhead Trail just outside of the property line, on the landscaped boulevard owned by the City.
3. If this application was simply a renewal of the existing Sign, it would not have been refused solely for noncompliance with the development regulations in Schedule 59F. However, this application is not simply a renewal as the existing Sign must be moved a few feet onto the subject site as illustrated in Tab 3 and Tab 4 of Exhibit "A".
4. The proposed location is outside of the required cone of vision along Yellowhead Trail.
5. The proposed Sign will be less than 20 square metres. An existing Minor Digital Off-premises Sign located on the southeast corner of Yellowhead Trail and 149 Street (the neighbouring Digital Sign) is larger than 20 square metres. Therefore a reciprocal 200 metre separation distance is required between the two (Schedule 59F.3(6)(e)).

SUMMARY OF HEARING (CONTINUED):

6. The neighbouring Digital Sign is on the side of a building. It was erected without a permit, but approved on appeal to the Subdivision and Development Appeal Board in August 2014. The Subdivision and Development Appeal Board varied the minimum required separation distance between the neighbouring Digital Sign and the existing Sign from 200 metres to 153 metres because of the existing landscaped boulevard between the two Signs.
7. If proximity was not an issue for the neighbouring Digital sign, or for the proposed Sign, this reason for refusal flies in the face of the Board's August 2014 decision.
8. He concluded that the Development Officer had either not read the Board's August 2014 decision or did not agree with the decision.
9. The proposed Sign does not comply with the minimum required 45 metre radial separation space requirement from an existing approved Freestanding On-premises Sign (the Husky Sign) (Schedule 59F.2(3)(c)).
10. The Husky sign was approved in February 2008 and the existing Sign was approved in 2009 before the 45 metre radial separation regulation came into effect in 2011. Both have existed without any known complaint.
11. Schedule 59F.2(3)(c) applies only to Permitted Uses and not to Discretionary Signs. Therefore, it applies to the Husky Sign which is a Permitted Use, but not to the proposed Sign because it is a Discretionary Use.
12. The existing Sign does not affect the use, enjoyment or amenities of the area, and neither would the proposed Sign.
13. As for a variance in required Setback (Section 350.4(3) and Schedule 59F.3(6)(j)), the Bylaw is ambiguous as to whether the Setback is measured from the actual paved carriage portion of the road or from the road right of way.
14. In any event, there is adequate separation distance to meet the purposes of a Setback requirement. The proposed Sign is located more than 7.5 metres from the actual public roadway because of the existing landscaped boulevard.
15. The submitted photographs show the wide landscaped buffer between Yellowhead Trail and the subject site which will help mitigate the variance in the minimum required Setback.

SUMMARY OF HEARING (CONTINUED):

16. He could not confirm whether or not this Setback variance had been granted when the existing Sign was approved in 2009, but in any event circumstances have not changed since that approval and the existing landscaped boulevard will provide a buffer between the proposed Sign and the public roadway.
17. The proposed Sign will not add to the proliferation of Signs along Yellowhead Trail because it results in the relocation of a Sign that has existed for 5 years.
18. General Municipal Plan Policy 15.B.3 specifically deals with street identification signage and locational signs, it does not address third party advertising signs and is not a reason to deny the application.
19. The Development Officer did not consider the fact that the Sign has existed for five years or that the Applicant was not simply requesting a renewal for that Sign.
20. This application is to relocate an existing Sign that can be approved only for a period of five years.

Mr. Murphy provided the following responses to questions:

1. It was his opinion that Section 3.1.4 of the Yellowhead Corridor Area Structure Plan sets out goals and direction policies. The content of the plan shows how the goals are to be achieved. The plan does not include any reference to third party advertising Signs.
2. There are no residential zones located in close proximity to the subject site and the existing landscaped buffer mitigates the deficiency in the Setback requirement.
3. The sign cannot be moved further west because of the existing drive aisle into the Husky car wash.
4. The Husky Sign does not meet the minimum required 7.5 metre setback and was approved in 2008.
5. A 200 metre reciprocal variance is required between the proposed Sign and the neighbouring Digital Sign. This variance was approved for the neighbouring Digital Sign by the Subdivision and Development Appeal Board in 2014.
6. The proposed location will move the sign off City property onto the subject site with minimal impact.
7. He could not provide an exact measure of the distance between the location of the existing Sign and the proposed Sign, but estimated it to be 10 to 15 feet.

SUMMARY OF HEARING (CONTINUED):

The Board then heard from Ms. Brenda Noorman, representing the Sustainable Development Department, who provided the following information:

1. She reviewed her reasons for refusal and stated that the Edmonton Zoning Bylaw includes minimum separation distance requirements in an attempt to reduce sign proliferation.

Ms. Noorman provided the following responses to questions:

1. She considered this development permit application as a new application because the existing Sign was erected on City land and not on the subject site in accordance with the approved development permit.
2. Therefore, the minimum separation distance requirements were applied, including the 45 metre radial separation requirement.
3. When the Subdivision and Development Appeal Board granted a variance and approved the neighbouring Digital Sign, they based that decision on the fact that the existing Sign on the subject site was a legal Sign erected according to an approved development permit.
4. The existing Sign is not legal and she reviewed this application according to the current requirements of the Edmonton Zoning Bylaw.
5. There is no hardship in the case as the Applicant could have made more of an attempt to increase the separation distance from the existing Husky Sign.
6. She may have been more receptive to granting variances if the Applicant had been more amenable to undertake efforts to increase the separation distance and lessen the required variance.
7. She conceded that moving the existing Sign off City property onto the subject site is an improvement.
8. Separation requirements are intended to reduce sign proliferation.

Mr. Murphy provided the following information in rebuttal:

1. Pattison Outdoor Advertising is in the process of reviewing all of their signs to correct any outstanding issues.
2. The proposed relocation of this existing Sign will not create any material change.
3. The Applicant did consider other locations on the subject site but determined that they were not workable commercially.

SUMMARY OF HEARING (CONTINUED):

4. His client could have avoided this situation by making an application for renewal of the existing Sign but decided to apply for a new development permit application and to relocate the existing Sign from City property to the subject site.

DECISION:

that the appeal be ALLOWED and the DEVELOPMENT GRANTED and the deficiency of 42 metres in the minimum required separation distance from any other Digital Sign greater than 8.0 square metres or Off-premises Sign per Schedule 59F.3(6)(e) and the deficiency of 7.0 metres in the minimum required Setback from the southeast property line per Schedule 59F.3(6)(j) and Section 350.4(3) be permitted, subject to the following conditions:

1. The permit shall be approved for a term of no longer than 5 years, at which time the Applicant shall apply for a new development permit for continued operation of the sign;
2. Should Transportation Services determine at any time 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;
3. The owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Services within 30 days of the notification of the safety concern. Failure to provide correction action will result in the requirement to immediately remove or de-energize the sign;
4. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

Advisement:

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

REASONS FOR DECISION:

The Board finds the following:

1. The proposed freestanding Minor Digital Off-premises Sign is a Discretionary Use in the CHY Highway Corridor Zone.
2. The variance to the minimum separation distance requirement between the proposed Sign and the neighbouring Minor Digital Off-premises Sign, pursuant to Schedule 59F.3(6)(e) is granted for the following reasons:
 - a. This very separation distance was considered by a previous Board in August 2014 (SDAB-D-14-211).
 - b. In that decision the Board granted a variance from 200 to 153 metres and found the following:
 - “1. The proposed development, a fascia Minor Digital On-premises Off-premises Sign, is a Discretionary Use in the IB Industrial Business Zone.
 2. The Board finds that the separation distance of 153 metres is adequate to mitigate the visual impact of the proposed development since the proposed Sign and the offending Sign are not visible in the same direction and therefore would not add to the proliferation and visual clutter of Signs in the area.
 3. The nature of the Industrial Business Zone and the high traffic volume on Yellowhead Trail will mitigate any negative impact of the proposed development in the area.
 4. Transportation Services has no objections to the proposed development.
 5. There were no letters of objection received and no one appeared in opposition to the proposed development.
 6. The proposed development, in the opinion of the Board is reasonably compatible with the surrounding neighbourhood and will not unduly interfere with the amenities of the neighbourhood or materially interfere with nor affect the use, enjoyment and value of the neighbouring parcels of land.”
 - c. While not bound by precedent, the Board notes that the matter in issue in both cases is a variance to the 200 metre required separation distance between the same two Signs. Based on the evidence provided to this Board, the only change in circumstances in the intervening four months is that the proposed Sign will be located further from the neighbouring Digital Sign than the existing Sign. Therefore, the required variance to Schedule 59F.3(6)(e) for this application is 42 metres, rather than 47 metres granted in the August 2014 Decision.

REASONS FOR DECISION (CONTINUED):

- d. Given that the current factual situation has not materially changed with respect to this issue since August 2014, this Board accepts the submission of the Appellant that the same reasons apply and grants the variance of 42 metres for those reasons quoted above.
3. The Board finds that a variance is not required to the minimum 45 metre radial separation distance from the Husky Sign, pursuant to Schedule 59F.2(3)(c). That regulation applies to Permitted Uses. Based on the evidence provided the proposed development is a Discretionary Use in this Zone and therefore subject to the regulations under Schedule 59F.3 not Schedule 59F.2. Schedule 59F.3 does not include a reciprocal 45 radial separation distance.
4. The variance of 7.0 metres is granted to the minimum required 7.5 metre Setback pursuant to Schedule 59F.3(6)(j) and Section 350.4(3) for the following reasons:
 - a. This variance is mitigated by the existing wide landscaped boulevard that separates the subject site from the travelled portion of Yellowhead Trail by at least 23 metres according to the aerial photos submitted by the Appellant and included in the Transportation Services email dated November 7, 2014.
 - b. The development permit is approved for a period of 5 years which will allow the Setback variance to be reconsidered if circumstances change or the decision is made to widen Yellowhead Trail.
5. This application involves moving an existing Sign to a location that is closer to one existing Freestanding On-premises Sign and farther from one existing Minor Digital Off-premises Fascia Sign, and it will not add to the proliferation of Signs in the area.
6. The existing Sign has been located in close proximity to the proposed new location for approximately 5 years without any known complaint or expressed concern and moving the Sign as proposed will have little material impact.
7. While Schedule 59F.2(3)(c) is not strictly applicable to the proposed Sign, it remains a factor for consideration in granting a permit for a Discretionary Use. Based on the site survey provided at Tab 3 of the Appellant's written submission, the existing Sign will be moved approximately 10 metres closer to the Husky Sign. However, based on the evidence provided, the proposed new location is north of the Husky Sign. Neither Sign will block sight lines to the other for approaching traffic. The Board also notes that no objections to the proposed location were put forward on behalf of the owners of the Husky Sign.

REASONS FOR DECISION (CONTINUED):

8. The subject site is purely commercial in nature and there is no risk that the proposed development will affect any residential properties.
9. Transportation Services does not object to the proposed development subject to conditions that have been imposed.
10. The purpose of the Yellowhead Corridor Area Structure Plan is to guide and direct future growth and change in ways that are compatible with the efficient operation of the Trail and the industrial character of the area. Within this context, the Plan strives to implement the recommendations of the Yellowhead Corridor Land Use Study and the policies of the General Municipal Plan. However, the Board notes that neither third party advertising Signs or Digital Signs are referenced in any way in the Yellowhead Corridor Area Structure Plan as a means to achieve the stated purposes of this Plan.
11. There were no letters of objection received and no one appeared in opposition to the proposed development.
12. The Board recognizes the practical benefit in moving the existing Sign from City owned property onto the subject site.
13. Based on the above, it is the opinion of the Board, that the proposed development, with the conditions imposed, will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

IMPORTANT INFORMATION FOR APPLICANT/APPELLANT

1. **THIS IS NOT A BUILDING PERMIT.** A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. A Development Permit shall expire and shall no longer be valid after one year from the date of approval of the Permit, if no construction has been initiated. However, if the permit holder is unable to proceed pending a court decision involving the proposed development, time shall not run until such proceedings are finally completed. For further information, refer to Section 22 of the Edmonton Zoning Bylaw, 12800.
4. Notwithstanding clause (3) above, if a Building Permit is issued for the development within the twelve month period, the Development Permit issued therefore shall not lapse unless and until the Building Permit so issued is cancelled or allowed to lapse by virtue of work not having commenced within the statutory minimum period.

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.

Ms. K. Cherniawsky, Presiding Officer
SUBDIVISION AND DEVELOPMENT
APPEAL BOARD

NOTE: Citizens can call 311, 24-hours a day, every day of the year for access to City of Edmonton information, programs and services.