



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Permit Solutions Inc.  
418, 9730 - 174 Street  
Edmonton AB T5T 6J4

Date: May 24, 2018  
Project Number: 276589956-001  
File Number: SDAB-D-18-068

**Notice of Decision**

[1] On May 9, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **April 18, 2018**. The appeal concerned the decision of the Development Authority, issued on April 10, 2018, to refuse the following development:

**Install (1) Fascia On-premises Sign (Buy Buy Baby).**

[2] The subject property is on Plan 8421891 Blk 28 Lot 5, located at 8882 - 170 Street NW, within the DC2.914 Site Specific Development Control Provision. The Summerlea Neighbourhood Area Structure Plan applies to the subject property.

[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;
- The Appellant’s written submission; and
- One on-line response in opposition to the proposed development.

[4] The following exhibit was presented during the hearing and form part of the record:

- Exhibit A – Photographs of two existing signs on the subject site.

**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*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

## Summary of Hearing

### *i) Position of the Appellant, Permit Solutions Inc.*

- [8] Ms. J. Matwychuyk and Mr. J. Czlonka appeared on behalf of Permit Solutions.
- [9] After the Presiding Officer outlined the limits of the Board's authority under section 685(4) of the *Municipal Government Act*, the Appellants explained that given the facts in this case they cannot understand how the Development Officer could ever have come to the stated conclusions. The Appellants reviewed and explained their written submission, calculations and photographs.
- [10] There are different ways to measure light. Mr. Czlonka explained how "candelas" and "lumens" are used to calculate foot-candles and the lux. The distance from a light to the subject in question, the intensity of the light and the beam angle are all required to calculate the amount of light on an area.
- [11] One lux is like a completely dark area with just the full moon for illumination. In this case, the net output of the sign is 4,800 lumens and the closest residence is 100.6 metres away. The amount of illumination that would affect this residence would be 0.02 lux which is 1/50 of the amount of the illumination of a full moon at night. When the existing street lamps, safety lamps, bus station and vegetation are taken into consideration the addition of 0.02 lux would not be noticed.
- [12] There is a significant amount of vehicular traffic on 87 Avenue (20,000 vehicles per day). During the winter months about 40 percent of this traffic occurs at night; therefore the passing headlights add to the existing illumination at this location. The Appellants provided photographs to illustrate the illumination effect of high intensity headlights caused by automobiles.
- [13] Photographs of the illumination generated by other on-site existing fascia signs, a freestanding sign, safety lights and the Edmonton Transit Station were reviewed to show the significant amount of light that is already being generated. They estimate the brightness of a nearby existing freestanding sign to be between 6,000 and 8,000 lumens and it is only 65 metres from the residences with no foliage blocking the light it emits.
- [14] The Appellants submitted photographs taken of the site showing that the existing intervening coniferous vegetation will also screen the proposed sign from the roadway as well as from residences further to the south.
- [15] They likened the light emitted by developments at West Edmonton Mall ("the Mall") and surrounding sources to the flow of water over Niagara Falls and argued allowing the proposed sign would be akin to adding the flow of a garden hose to the falls – no one would notice the addition. Based on their calculations and recorded observations at the site, the impact of the addition of the proposed sign would be negligible and imperceptible given current conditions.

- [16] The proposed sign is a channel letter sign with an opaque background. Only the copy will be illuminated. It is similar to many other signs existing at the subject site.
- [17] The proposed development is a wayfinding sign for clients of the store. Clients shopping for this type of product are often in the later months of pregnancy and traipsing across the Mall can be difficult. Buy Buy Baby and the Rec Centre are the only businesses located on the third level of the Mall. The sign is necessary as most clients would not expect to find a store on the third level.
- [18] In their view the proposed sign complies with all of the regulations of the Direct Control District and the *Edmonton Zoning Bylaw*. Its purpose and design is no different than any other previously approved signs found at the mall.
- [19] There are currently other similar signs existing along the sides of the parkade structure at different locations (Exhibit A). For example, there is a larger fascia sign with the wording Entrance 48 attached to the parking structure. There is also an almost identical lit fascia Bed Bath and Beyond sign attached to the parking structure. It is located on the other side of the Mall on the side of the parkade and closer to the surrounding residences it faces than the proposed sign.
- [20] The Appellants provided the following responses to questions from the Board.
- a) This sign is compatible with the architectural style and development of the building as it is a typical fascia sign and no different than any other sign at a shopping centre. They are unsure how the Development Officer concluded this sign is not within the character of the building or property as 99.9% of mall signs are designed similarly. This Mall does not have a “historical design,” – it is designed like a typical large shopping centre.
  - b) A wide variety of signs already exist at the Mall and the proposed sign follows the implied architectural guidelines of the Mall.
  - c) This business has two other fascia signs in place – one facing west and the other facing south. The proposed sign is a wayfinding sign located at the ramp to help customers find the parking area.
  - d) They did not provide their light study to the Development Officer as this was not an application requirement. They do not know on what basis the Development Officer made his decision.
  - e) In their view, as proven by the photographs that they submitted, the vegetation on the berm and the trees in front of the closest residences were not taken into consideration when the Development Officer came to his opinion respecting visual clutter and light impact.
  - f) Further they argue that there is no sign proliferation as this would be the only sign on the parkade in this vicinity and the Sign complies with all the other applicable

development regulations in section 59 of the *Edmonton Zoning Bylaw* as required by the Direct Control District Regulations.

ii) *Position of Manager – Ms. L. Lund, District Manager, Buy Buy Baby*

[21] Buy Buy Baby receives daily feedback from their customers who cannot locate the exterior door to the business. Ms. Lund reiterated that clients are often pregnant or have small children. Their store has designated parking for mothers with children by their exterior door but these parking spaces are underused because clients cannot find them.

iii) *Position of the Development Officer, Mr. C. Kennedy*

[22] The Development Authority was not in attendance but sent the Board a two-page written submission.

### Decision

[23] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority.

### Reasons for Decision

[24] This is an appeal of the refusal of a Development Permit for a Fascia On-premises Sign. The Stamped Refused Plans specify that the proposed Sign is 4.0 feet in Height by 16 feet in Width. It has a black background and lit, white channel lettering 2 feet 2 1/4 inches in Height. The Appellants seek to install the Sign at a Height of 261 inches to the side of the parking structure which is attached to the principal building. The proposed location is 1491 inches from the property line of the subject Site and faces adjacent residences located to the south across 87 Avenue. The closest residence is 100.6 metres from the proposed Sign.

[25] The subject Site is commonly known as West Edmonton Mall. It is a Direct Control District (DC2.914).

[26] As the subject Site is designated as a Direct Control District, this matter is governed by section 685(4) of the *Municipal Government Act* which sets out the limited scope of appeal and the role of the Board:

685(4) Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[27] Pursuant to section 685(4), the Board first considered whether the Development Officer followed the directions of Council as found in DC2.914.

[28] The General Purpose of this Direct Control District is found in section DC2.914.1:

To accommodate a variety of uses including commercial, office and professional services, health care services, residential, community, recreational, entertainment and educational uses with specific development criteria that will achieve a compatible relationship between the subject site, currently known as West Edmonton Mall, and surrounding land uses; and establish a high standard of building appearance appropriate to the Site's proximity to residential development.

[29] Fascia On-premises Sign is a listed Use per section DC2.914.3(oo).

[30] Section DC2. 914.4 is also relevant. It provides in part:

(n) Signs shall be in accordance with Schedule 59E (Regulations for Permitted Signs) and the general provisions of Section 59 of the Zoning Bylaw, and the following:

(i) All exterior Signs shall be compatible with the architectural character and style of development on the Site, to the satisfaction of the Development Officer...

[31] In the Refused Development Permit, the Development Officer gave two reasons for refusal which included three conclusions:

1. All exterior Signs shall be compatible with the architectural character and style of development on the Site, to the satisfaction of the Development Officer. (Reference section DC2.914.4(n)(i))

*The proposed Sign, located on the parkade, is not consistent with the placement of existing Fascia On-premises Signs on site. Currently, Fascia On-premises Signs are located on exterior building walls to identify or advertise a business located in the shopping centre where the Sign is displayed. The proposed sign would adversely impact the architectural character by creating sign proliferation and visual clutter on the site.*

2. 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. (Reference section 59.2(6)).

*The proposed development would, in the opinion of the Development Officer, materially interfere with or affect the use, enjoyment or value of neighbouring properties due to light pollution.*

- [32] The Development Officer did not attend the appeal, but he did provide a written report which reiterates the reasons for refusal as follows:

**4. Regulation Review and Discussion of Variances and/or Deficiencies and Related Justification**

*It was the opinion of the Development Authority that the requested variance was not in keeping with the intentions of City Council as provided in Direct Control Zone DC2 (914). The Direct Control Zone states: "All exterior Signs shall be compatible with the architectural character and style of development on the Site, to the satisfaction of the Development Officer." The proposed sign, located on the parkade, was not consistent with the placement of existing Fascia On premises Signs on site. Currently, Fascia On-premises Signs are located on exterior building walls to identify or advertise a business located in the shopping centre where the Sign is displayed. The proposed sign would adversely impact the architectural character by creating sign proliferation and visual clutter on the site.*

- [33] No other information was provided to the Board to explain or support the Development Officer's conclusions or to refute any of the submissions or evidence provided by the Appellants.
- [34] The Appellants acknowledged that the Development Officer had come to the conclusions stated in the refused permit and that section DC2.914.4(n) includes the phrase "to the satisfaction of the Development Officer." However, they argued these conclusions are wrong, could not be supported by the factual circumstances, and are unfair as they are contrary to several previously approved Development Permits for identical and more impactful Signs in place at the subject Site.
- [35] The Appellants are very familiar with Signs and deal with related light issues regularly. They have made other applications for Signs on the subject Site and are therefore also familiar with the prior approvals, although they did not provide any specifics.
- [36] They provided a detailed 15-page report, explanatory oral submissions and photographs to support their view that Development Officer's conclusions were not reasonably possible.
- [37] The Appellants argued that based on the evidence, the light emanating from the proposed Sign could not possibly materially interfere with or affect the use, enjoyment or value of neighbouring properties due to light pollution:

- i) Using “worst case scenario values”, the Appellants calculated the amount of light that would be emitted by the proposed Sign and perceived at the nearest residential dwelling. These calculations showed that without any other mitigating environmental conditions, the proposed Sign will result in at most .02 lux, 0.00186 foot candles or 1/50 the amount of light provided by a full moon.
  - ii) Next, they provided detailed information about the background ambient light emitted by the specific type of street lights currently installed along 87 Avenue between the residences and the subject Site. The Appellants included a simulation to demonstrate that given the light pollution produced by these existing street lights, any light emitted by the proposed Sign would be completely washed out and imperceptible by any of the residents facing it regardless of any of the other intervening conditions.
  - iii) They then provided aerial and street level photographs taken from north and south showing the views across the existing berm and the mature vegetation, including several large coniferous trees along the perimeter of the Site on the north side of 87 avenue as well as the mixed, mature vegetation on the south side of the 87 avenue on the public lands and in the rear yards of the adjacent residential lots. These photographs demonstrated that the existing vegetation obscures the view of the proposed location for the Sign.
  - iv) They provided technical information about the actual traffic (20,000 vehicles per day) passing by on 87 Avenue and the light cast by several different types of common head lights given the statistical information about sunlight and the hours of roadway use. According to their calculations, the intervening light pollution cast by traffic would far outstrip any signage in the area.
  - v) Given the current conditions, they concluded that “any increase in illumination emitted from the proposed Sign, when combined with the light output of the street lamps and vehicle headlamps, will not result in any perceived increase in brightness at the nearby residences.”
  - vi) Over and beyond that evidence, the Appellants also provided photographs of the other existing sources of light pollution along 87 Avenue due to approved Signs on the south side of the Mall and along the perimeter of the subject Site. They noted that some of these existing Signs would have more impact on adjacent properties than the proposed Sign based on their photographs.
  - vii) Finally, the Appellants provided information about the light cast by the existing Transit Station located just west of the proposed Sign location and between the subject Site and residences to the south.
- [38] The Appellants argued that the proposed Sign was exactly what would be expected on the subject Site given the purpose of this Direct Control District and the Sign could not in fact be considered incompatible with the architectural style and character of development on the Site (as the Development Officer stated) based on the following evidence:

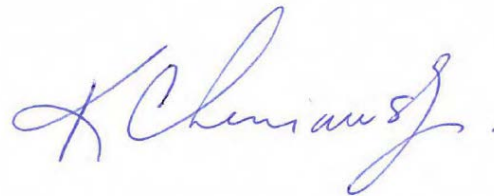
- i)* They were unaware of any specific written architectural guidelines applicable to Signs at West Edmonton Mall. As the photographs show, the proposed Sign fits in perfectly with the existing commercial environment and with whatever architectural designs this large commercial shopping centre could possibly have.
  - ii)* Their submission showed that the subject Site is a very large shopping mall. There are many diverse types of commercial Signs of many sizes. The vast majority of the existing Fascia or Freestanding On-Premises Signs are similar to the proposed development; they are lit and include channel lettering to identify specific businesses.
  - iii)* They submitted photographs in direct contradiction to the Development Officer's conclusion that proposed Sign location is contrary to architectural guidelines because it is inconsistent with the existing Fascia On-premises Signs locations which are located on the building walls as opposed to the parkade.
  - iv)* Their photographs clearly show other on-site Signs attached to the side walls of the main Mall structure, Signs attached to the connected parking structure and Signs at freestanding locations. The photos included two lit, Fascia on-Premises Signs that were very similar to the proposed Sign and had been attached to the side of the parkade. One of these, the Bed Bath and Beyond Sign, was for a related company. Other than the specific Copy, that Fascia Sign was virtually identical to the proposed Sign. It was located on the parking structure facing residential properties at a smaller separation distance than the proposed Sign.
  - v)* The Development Officer's conclusion that the proposed Sign would add to proliferation of signs was not correct based on the factual conditions at the Site, including: the proposed Sign was to be located in an isolated location; the subject Site is a very large mall where many diverse Signs would be expected and did in fact exist; and the proposed Sign was otherwise fully compliant with all regulations, including any maximum number, locational and separation regulations.
  - vi)* Several of the previously approved Signs shown in their photographs were larger and demonstrably more impactful on the neighbouring residences. In their view, it was unfair and arbitrary to deny their compliant application in view of those other existing approved Signs.
- [39] In the Board's view, when Council delegated to the Development Officer the authority to make a decision with respect to this matter, it was implicit that the Development Officer should exercise his discretion to refuse the application for a Listed Use reasonably and based on a correct understanding of the circumstances at the subject Site and should not act arbitrarily. Based on all of the evidence, the Board finds that this was not done. The Appellants thoroughly refuted each of the Development Officer's conclusions and the Board finds that the substantial and un-refuted evidence clearly establishes that:



- i) the proposed Sign is not inconsistent with the placement of existing Fascia On-premises Signs as other Signs are in fact located on both the building walls and the walls of the attached parkade, as well as at freestanding locations.
- ii) the light emitted by the proposed Sign will have a negligible impact on neighbouring residences given its location, the existing mature vegetation and the surrounding ambient conditions; and,
- iii) the proposed Sign fits squarely in the general purpose of this Direct Control District and the existing environment - a large shopping centre with a significant number of previously approved comparable on-Site Fascia Signs, including Signs which are similar in style and identical in location. It could not reasonably be said to add to proliferation of Signs and visual clutter on the property or to be inconsistent with architectural guidelines.

[40] Therefore the Board finds that the Development Officer failed to follow the directions of Council, particularly the implicit direction that decisions be reasonable, based on a correct understanding of the circumstances and not arbitrary.

[41] Given this conclusion, the Board then considered the application. After taking account of the written objection received from an affected party who was concerned about light emissions, the Board approved the proposed development for the reasons outlined above in relation to the directions of Council.



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

Board Members in Attendance:

Mr. B. Gibson; Mr. K. Hample; Ms. G. Harris; Mr. A. Nagy

cc: Development & Zoning Services – Mr. C. Kennedy / Ms. B. Noorman

**Important Information for the Applicant/Appellant**

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

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



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## **SDAB-D-18-069**

### **Application No. 271687264-001**

An appeal to Change the Use from a Professional, Financial and Office Support Services to a Child Care Services (122 children) and to develop an outdoor play space (remove 6 parking spaces), located at 6060 – Andrews Way SW, was **RESCHEDULED** to May 23, 2018.



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## **SDAB-D-18-070**

### **Application No. 267804471-001**

An appeal to construct a Single Detached House with Basement development (NOT to be used as an additional Dwelling), fireplace, rear uncovered deck (under 0.6 metres in Height), Unenclosed Front Porch, located at 9843 – 86 Avenue NW, was **POSTPONED** to June 20, 21, 27 or 28 (to be determined).