



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: June 1, 2017  
Project Number: 234073082-001  
File Number: SDAB-D-17-073

**Notice of Decision**

- [1] On April 26, 2017 and May 17, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on April 4, 2017. The appeal concerned the decision of the Development Authority, issued on March 22, 2017, to refuse the following development:

Install a Freestanding Minor Digital On-Premises Sign (Top panel backlit static - Midnight Sun Restaurant & Digital Panel - Cheers and Beers)

- [2] The subject property is on Plan RN39B Blk 45 Lot 20, located at 11003 - 124 Street NW, within the CB1 Low Intensity Business Zone. The Medium Scale Residential Infill Overlay and the West Ingle ARP apply to the subject property.
- [3] The following documents were received prior to the April 26, 2017 hearing, and form part of the record:
- Copy of the refused permit, permit application and plans;
  - Canada Post receipt confirming delivery of the refusal decision;
  - Development Officer's written submissions dated April 20, 2017; and
  - One online response in opposition to the development.
- [4] The following documents were received after the April 26, 2017 hearing, prior to the May 17, 2017 hearing, and form part of the record:
- Correspondence from City of Edmonton Transportation Planning and Engineering;
  - Three online responses in opposition to the development; and
  - Land survey of subject property.
- [5] The following exhibits were presented during the May 17, 2017 hearing and form part of the record:
- Exhibits A-1 and A-2 – Hand-drawn diagrams of the proposed development, submitted by the Appellant; and

- Exhibits B-1 and B-2 – Hand-drawn diagrams of the proposed development, submitted by the Development Officer.

### **Preliminary Matters**

- [6] 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.
- [7] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

### **Summary of Hearing**

#### **April 26, 2017 Hearing**

##### *i) Position of the Appellant, LED Pros*

- [9] The Appellant was represented by Mr. R. Vizslai, who was accompanied by Mr. K. Gill, the business owner of Cheers and Beers.
- [10] When the Appellant submitted the development permit application for the subject Freestanding Minor Digital On-Premises Sign, it was discovered that the pre-existing Freestanding Sign that has been operating for approximately 15 to 20 years did not have a permit. The Appellant understood that the proposed Digital Sign has a setback deficiency, but compliance with the setback regulations would result in moving the existing sign infrastructure into the parking lot of the commercial shopping strip.
- [11] The Appellant also acknowledged that the existing sign encroaches onto the City's lands. To address this problem, the Sign Faces will be moved toward the parking lot, but the pole will remain in its current location.
- [12] Upon questioning by the Board, the Appellant reviewed the dimensions and exact location of the proposed sign. The Appellant was unable to clarify the precise height of the sign, the exact portion of the sign encroaching upon the City's lands, and the location of the sign, including the existing pole, in relation to the property line and setbacks. No survey or site plan was available.
- [13] Concerns over light pollution as cited in the Development Authority's refusal decision are mitigated by several factors. First, the sign is located on 124 Street, which is a well-lit road. Christmas LED lights that wrap around the trees lining this street operate throughout the year. The streetlights are also atypical – they are of a lower height at approximately 10 feet tall, with globe-like lamps.

As the proposed sign is oriented north/south, there will be no direct impact upon the nearby homes and the businesses within the shopping strip. The Appellant acknowledged that there is a residential property to the north with one small window located on its southern side that may be impacted by the light from the sign.

- [14] Upon questioning by the Board, the Appellant explained that the proposed Digital Sign will have various technological features. Sign messaging can be programmed for duration and brightness, with automatic adjustments to brightness based on the ambient lighting. The sign possesses the technology to display both text and video advertisements, but the Appellant has no intention of playing video advertisements.

The appeal of a Digital Sign is the ability to change the messaging, but the sign will only be used to advertise the operating hours and promotions for the business.

- [15] Upon questioning by the Board, the Appellant reviewed the recommended conditions of the Development Officer. Should the Board grant the development, the Appellant would prefer that the condition requiring the sign to be turned off between 10:00 p.m. to 6:00 a.m. be amended, as their business does operate between 10:00 p.m. and 2:00 a.m. During this time, the Appellant would like to turn on the sign to show that the business is open. However, a reduction in the brightness during this timeslot would be acceptable as would a requirement that the sign remain static after 10:00 p.m. The Appellant confirmed that the sign will be turned off when the business is not operating.

- [16] Regarding the fourth recommended condition, the Appellant noted that it is not possible for the sign to face any other direction except the north.

- [17] The Appellant confirmed that some photo editing was done on the documents submitted to the Development Officer. The edits were intended to demonstrate where the new sign face would be located, but the sign post and base will remain at its existing location.

*ii) Position of the Development Authority*

- [18] The Development Authority was represented by Mr. S. Ahuja.

- [19] Mr. Ahuja expressed confusion over the information presented by the Appellant, which differed from his review of the documents included in the application. It was his understanding that to address the encroachment problem, not only would the existing Sign Face need to be moved, but the entire Sign – including the post and base – must be shifted. He suggested that it may therefore be appropriate for the Appellant to obtain a site plan.

- [20] Regarding the Appellant's submissions that the proposed sign will not have a significant impact upon light pollution in the area, Mr. Ahuja noted that the proposed sign can emit up to 6500 to 8000 cd/sgm, and questioned what this number amounts to in lumens or nits. More clarity regarding these values would be needed to determine compliance with the bylaw requirements.
- [21] Upon questioning by the Board about the Pictometry images that were used by the Appellant in place of an official land survey, Mr. Ahuja acknowledged that in some circumstances, the City will accept Pictometry images. However, the property line overlays on these Pictometry images have a tolerance of about half a foot to a foot.
- [22] The Board noted that it must grant variances based on accurate information pertaining to the exact dimensions and location of the proposed sign. At this point, the Board recessed to provide an opportunity for the parties to obtain more accurate information, if available.
- [23] After the brief recess, the Board explained that the Appellant could choose to proceed with the appeal hearing, based on potentially incomplete or inaccurate information already submitted to the Board, or request an adjournment to obtain more accurate information.
- [24] The Appellant requested an adjournment. The City had no objection to the request. The parties were canvassed, and May 17, 2017 was determined to be a suitable date for the continuance of the hearing.
- [25] The Board noted that the checklist on page 3 of the standard forms applicable to all sign applications requires site plans. The Board also noted that for these types of appeals, it would typically receive more complete drawings that show Sign dimensions and setbacks.

### **May 17, 2017 Hearing**

#### *i) Position of the Appellant, LED Pros*

- [26] The Appellant began his presentation, but upon questioning by the Board, it became evident that notwithstanding the new Site survey plan submitted by the Appellant, clarity was needed with respect to the precise location of the proposed Sign. The Board recessed for approximately 15 minutes to provide additional time for the Appellant to calculate more exact numbers. The Board noted that it is an adjudicative body, and that variances, if granted, must be based on concrete measurements and not approximations.
- [27] Upon resuming the hearing, and further questioning by the Board, the Appellant provided the following information:

- a) The application is for the entire Sign structure, including both the existing static Sign (existing without permits) and the proposed Digital Sign, which will be installed below the static Sign.
- b) The Digital Sign is narrower than the Static Sign.
- c) The Sign base is 0.76 metres x 0.76 metres, and the Sign pole is 0.18 metres in diameter.
- d) The Appellant seeks a variance to the west and south setbacks, to permit a setback of 0.3 metres from the Digital Sign to the west property line, and 0.53 metres to the south property line.
- e) The Static Sign will remain at its current location, notwithstanding the addition of the Digital Sign to the existing Sign structure. The Digital Sign portion of the development will be designed by a professional engineer, though the Appellant has not obtained engineering plans for the existing Static Sign.
- f) The Appellant submitted Exhibits A-1 and A-2, hand-drawn diagrams of the proposed Sign with related dimensions and measurements.
- g) The lowest light output for the Digital Sign is 150 nits, or the equivalent of 14 lumens per square feet. If need be, the Appellant is prepared to accept a condition that the Sign's light emission comply with the maximum limits prescribed by the regulations or reduced to its minimum operational level after 10:00 p.m.
- h) The Digital Sign will operate at its standard brightness level to 10:00 p.m., at which time it will dim and display a static message until it is de-energized at 2 a.m.
- i) The Appellant acknowledged the concerns of neighbouring property owners regarding light emission. However, he noted that two of the online responses are from owners whose properties are located to the west, and the third is located southwest. The Sign faces north-south, and will not impact the owners to the west; toward the southwest are commercial properties.

[28] The Appellant reviewed the recommended conditions of the Development Officer. The Appellant stated that he would be unable to comply with condition three, which requires that the Digital Sign not face residential properties to the north. The proposed Digital Sign is intended to attract traffic from 127 Street, which is a north-south road. The Appellant would also like condition four amended to allow the operation of the Digital Sign from 10:00 p.m. to 2:00 a.m, or until morning, or until the business opens. During this time, the Digital Sign will effectively function as a static Sign with minimal light.

[29] The Appellant expressed no concerns with the conditions proposed by Transportation Planning and Engineering, including the condition that the Digital Sign limit its messaging to intervals of 30 seconds or more.

*ii) Position of the Development Authority*

[30] Mr. Ahuja sought clarification of the measurements submitted by the Appellant. After the Board explained the Sign dimensions and setbacks as submitted by the Appellant, Mr. Ahuja provided hand-drawn diagrams of the proposed development with his own set of measurements (Exhibits "B-1" and "B-2").

- [31] The diameter of the pole is 0.18 metres, translating into a radius of 0.09 metres. According to the site survey, the base is 0.42 metres in width. Based on these numbers and the information provided by the Appellant in the refused elevation plans, he calculated 0.72 metres from the edge of the concrete base to the property line.
- [32] Regarding the setbacks, Mr. Ahuja explained that a 3.0 metre setback on the west is required. This variance would have been considered if not for the potential issue with the Sign's illumination into residential properties to the west. He acknowledged that the Sign is oriented north-south. However, light from a Digital Sign can travel and impact nearby residents. The memorandum from Transportation Planning and Engineering does not express concerns, but he noted that they only consider traffic safety and not impacts upon residents.
- [33] Mr. Ahuja noted that stray light in residential areas is mostly a concern at night, particularly where the Digital Sign is not static. The flickering from the changing copy and potential for brighter illumination exacerbates potential impacts.
- [34] Upon questioning by the Board, Mr. Ahuja clarified that based on the applicable Sign regulations, any sign greater than eight square metres cannot be within the required setback. However, there is nothing stating that smaller Signs are permitted in the required setback either. Hence, when reviewing such applications, he has to exercise discretion, and in this case, the determining factor to refuse the variance was the light illumination into residential areas. In other words, although the setback in section 330.4(4) was stated as a reason for refusal, a variance to this setback regulation is not needed for the proposed Sign.
- [35] He confirmed that the existing static backlit sign is currently de-energized at 10:00 p.m. and has not generated any known complaints.

*iii) Rebuttal of the Appellant*

- [36] The Appellant reiterated his core submissions and provided additional information regarding the illumination from the Sign. Based on his calculations, the Sign will emit 210 lumens at its lowest brightness level, which is well below the 1100 lumens required in the regulations.
- [37] The Development Officer confirmed that compliance officers do have equipment that can check the brightness level of the Digital Sign.

**Decision**

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

- 1) The subject Freestanding Minor Digital On-premises Sign (Top panel backlit static – Midnight Sun Restaurant and Digital Panel – Cheers and Beers) is approved for a term of five years, from June 1, 2017 to May 31, 2022.
- 2) No portion of the subject Sign shall be located closer than 0.3 metres from the west Lot Line on 124 Street, nor 0.53 metres from the south Lot Line along 110 Avenue.
- 3) The proposed Freestanding On-premises Sign shall face north and south in accordance with the attached aerial plan.
- 4) Minor Digital Off-premises Signs shall use automatic light level controls to adjust light levels at night, under cloudy and other darkened conditions to reduce light pollution, in accordance with the following:
  - a) Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
  - b) Brightness level of the Sign shall not exceed 400 nits when measured from the sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise/Sunset calculator from the national research Council of Canada (Reference Section 59.2(5)(b))
- 5) Notwithstanding Condition 4, the digital panel of the subject Sign shall be illuminated at a level no greater than 150 nits daily between the hours of 10:00 p.m. and 2:00 a.m. daily, and the display during this period shall be static with a black background. The digital panel shall be de-energized from 2:00 a.m. to 6:00 a.m. daily.
- 6) The proposed Freestanding Minor Digital On-Premises Sign shall comply with the following conditions in consultation with Transportation Planning, in accordance with Section 59.2(11):
  - a) That, 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.

- b) That 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.
  - c) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.
- 7) The minimum Message Duration for the Digital Sign shall be 30 seconds or greater.

**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.
  - 2) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Reference Section 5.2).
- [39] In granting the development, the following **VARIANCES** to the *Edmonton Zoning Bylaw* are allowed:
- 1) Section 59.2(3) is varied to permit the subject Freestanding Minor Digital On-premises Sign to project illumination onto surrounding residential premises, and to face an abutting or adjacent Residential Use.
  - 2) Section 330.4(3) is varied to permit a setback of 0.3 metres from the Digital Sign to the west property line, and 0.53 metres to the south property line.

**Reasons for Decision**

- [40] The proposed development includes a Freestanding On-premises Sign which is a Permitted Use in the CB1 Low Intensity Business Zone, and a Minor Digital On-Premises Sign which is a Discretionary Use in this Zone.



- [41] During the hearing, the Development Officer acknowledged that as the proposed Sign is under eight square metres, pursuant to section 59F.3(6)(j), it may be located within the setback and no variance to the setback requirements under section 330.4(3) of the CB1 Zone is required. As the Board has granted a variance to section 330.4(3) for the reasons which follow, it makes no determination about whether section 59F.3(6)(j) by implication exempts the proposed development from section 330.4(4).
- [42] Three nearby affected parties provided letters of opposition to the development citing concerns regarding light pollution from the digital portion of the Sign. Illumination of surrounding residential Uses from the digital portion of the Sign was also cited by the Development Officer as the principal reason for refusal of the discretionary Use.
- [43] The Board finds that the proposed development is reasonably compatible with surrounding developments, including residential Uses, and that it 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 for the following reasons:
- a) A static backlit Sign has been in place at the same location on the subject Site without documented complaints for over twenty years.
  - b) The subject Site abuts 124 Street, a well-lit arterial roadway with additional LED lighting year-round. As the environment is already well-lit by the additional lighting provided by the Business Association, the digital portion of the proposed development will have less of an impact.
  - c) The digital faces of the Sign are five feet by three feet.
  - d) The proposed Sign will face north and south. The most directly affected abutting neighbour to the north did not express opposition. The neighbours to the southwest are located more than 60 metres from the proposed development and across the intervening lit street.
  - e) The Board has imposed additional conditions that further ameliorate the impact of the digital portion of the proposed development. Pursuant to these conditions, the Digital Sign shall remain static with a black background, and its illumination shall be limited to 150 nits between the hours of 10 p.m. and 2 a.m., and then de-energized between the hours of 2 a.m. and 6 a.m. With this condition, the Digital Sign operates as a Static Sign during this period. The Board notes that the requirement for 150 nits is significantly lower than the maximum allowable illumination of 1100 lumens applicable to Digital Signs under the *Bylaw*.
  - f) Transportation had no traffic or safety concerns with the location of the Digital Sign, so long as it has a minimum Message Duration of 30 seconds instead of the usual eight seconds. The Board has affirmed this requirement in Condition 7.

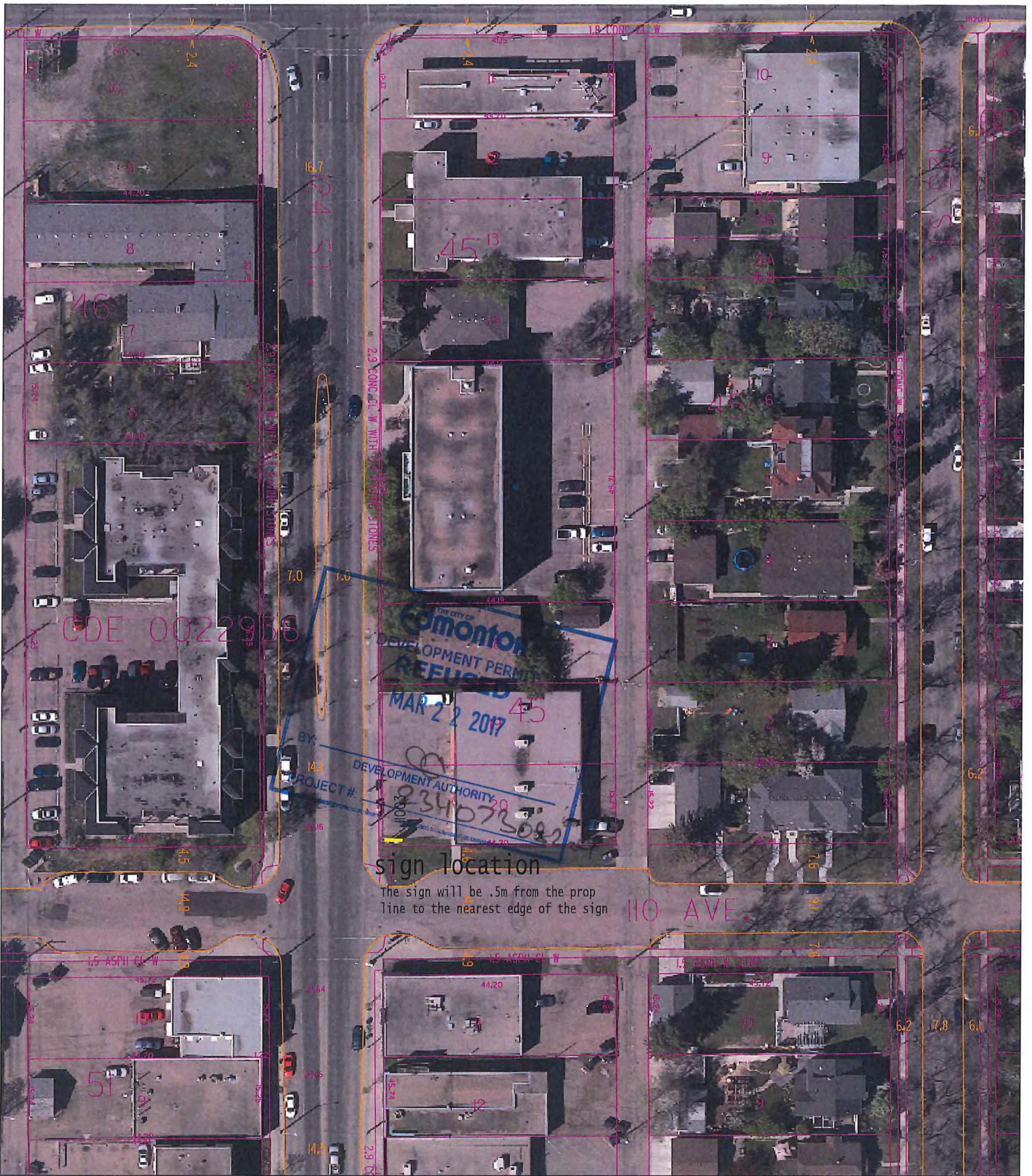
- g) The Board notes that the Appellant expressed a commercial interest in limiting the adverse impacts for nearby residents who would form part of its customer base and accordingly was not opposed to the additional conditions that have been imposed by the Board.

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

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 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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TRANSPORTATION  
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INFRASTRUCTURE & MAPPING

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All dimensions are in meters. Information provided on this plan should not be used to establish property boundaries.

**SDAB-D-17-086**

Application No. 232166360-001

An appeal by Icewerx Consulting Inc. to install a Fascia Minor Digital Off-premises Sign (6.1 metres by 3.0 metres – facing North), located at 9914 – 109 Street NW, will be **CONTINUED ON A DATE TO BE DETERMINED.**