



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

*10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
P: 780-496-6079 F: 780-577-3537
sdab@edmonton.ca
edmontonsdab.ca*

Date: June 5, 2019
Project Number: 305540617-001
File Number: SDAB-D-19-068

Notice of Decision

- [1] On May 22, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on April 29, 2019. The appeal concerned the decision of the Development Authority, issued on April 25, 2019, to refuse the following development:

Install (1) Minor Digital On-premises Off-premises Freestanding Sign
(PATTISON | PUBLIC AUTO BODY)

- [2] The subject property is on Plan 5740AI Blk 85 Lots 1-5, located at 5811 - 104 Street NW, within the IM Medium Industrial Zone. The Calgary Trail LUS applies to the subject property.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the Development Permit application with attachments, proposed plans, and the refused Development Permit;
 - The Development Officer’s written submissions; and
 - The Appellant’s written submissions.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

Summary of Hearing

i) Position of the Appellant, represented by legal counsel, Mr. J. Murphy

- [7] Mr. Murphy referred to TAB 1 of his supporting materials, which detailed that the Development Officer's reason for refusing the proposed Sign was that it did not comply with the Calgary Trail Land Use Study (the "LUS").
- [8] He submitted that the proposed Sign is consistent with previous SDAB decisions, and that the LUS is not a Statutory Plan. The Development Officer applied Section 3.4(b)(ii) of the LUS in refusing the permit, but did not mention that another permit for a Freestanding Minor Digital On-Premises Off-premises Sign was previously approved by a Development Officer. The LUS was in effect at the time of that approval (TABS 4 and 5).
- [9] Referring to TABS 2 and 3, he noted that the proposed Development is a Discretionary Use under Section 420.3 of the IM Medium Industrial Zone, and that the proposed Sign complies with Schedule 59G.3, which sets out the regulations governing Discretionary Signs.
- [10] He referenced *Sihota v Edmonton (City)*, 2013 ABCA 43 [*Sihota*], a decision of the Alberta Court of Appeal that addressed the question of whether the doctrine of issue estoppel precludes the City of Edmonton from denying an Applicant a development permit. Mr. Murphy submitted that, per *Shota*, issue estoppel must be applied within the context of the permit.
- [11] In this instance, the issue is not whether the SDAB is bound by its previous decisions, nor whether it is bound by the decisions of the Development Officer. Put another way, issue estoppel does not arise because a prior decision is "binding on the tribunal", although that may be the effect; rather, issue estoppel means that a prior decision is "binding on the parties", and prevents the parties from re-litigating what has been decided.
- [12] He referred to previous SDAB decisions, in which the Board approved similar Signs within the LUS area. SDAB-D-15-181 noted that the concerns raised in the LUS relate to the voluntary replacement of older advertising signage, which was perceived as being unattractive, whereas the proposed Sign was a modern Digital Sign. Furthermore, if City Council wanted to eliminate Freestanding Digital Signs along the Calgary Trail corridor, they could have done so as they did in the civic centre area by prohibiting Minor Digital On-premises Off-premises Signs (Section 59F.3(6)(a)).
- [13] He also referenced SDAB-D-15-242, where the Board found that the LUS is not a statutory plan per the definition under section 616(dd) of the *Municipal Government Act* (the "MGA").

- [14] Furthermore, the LUS does not set out specific impacts on the subject area, as the LUS applies to several neighbourhoods. He referred to a Google Map of the area showing the existing sign and building on the subject Site.
- [15] There have been no known complaints regarding the existing sign.
- [16] Mr. Murphy provided the following information in response to questions by the Board:
- a. The proposed Sign is a Discretionary Use in the IM Medium Industrial Zone. Circumstances have not changed in the area and, in his opinion, the Board cannot refuse the development permit based on the LUS.
 - b. He confirmed that the existing sign is a Minor Digital On-premises Off-premises Freestanding Sign, and that the landlord may advertise on the Sign if they wish.
 - c. As set out in TAB 5 of his materials, the proposed Sign was approved in 2014.

ii) Position of the Development Officer, Ms. Mercier

- [17] The Development Authority did not appear at the hearing and the Board relied on Ms. Mercier's written submission.

Decision

- [18] 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 permit will expire on **June 5, 2024**.
 2. The proposed Minor Digital On-premises Off-premises Freestanding Sign shall comply with the approved plans submitted.
 3. 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))

4. 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. Minor Digital On-premises Off-premises Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 59.2(18))
6. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12))
7. The following conditions, in consultation with the Transportation department (Subdivision Planning), shall apply to the proposed Minor Digital On-premises Off-premises Sign, in accordance with Section 59.2(11):
 - a. That, should at any time, City Operations 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 City Operations.
 - b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations 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.

ADVISEMENTS:

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, City Operations 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 including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2).

Reasons for Decision

- [19] The proposed development, a Minor Digital On-premises Off-premises Freestanding Sign is a Discretionary Use in the IM Medium Industrial Zone.
- [20] The existing Sign was approved in 2014 and the Calgary Trail Land Use Study was not mentioned at that time.
- [21] The existing Sign replaced an older billboard style Sign, and complies with all of the regulations of the *Edmonton Zoning Bylaw*.
- [22] Section 3.5(b) of the Calgary Trail Land Use Study reads:
- b) Greater attention shall be given to improving the location, siting, Signage comprehensibility and design of signage in the corridor by:
 - i) promoting within the business community the voluntary replacement of older advertising signage;
 - ii) discouraging the use of portable signs and free-standing billboards; and
 - iii) improving directional signage to major facilities such as hospitals, University, Downtown, and Government Centre.
- Through information received in the business survey and through visual inspection of the corridor, advertising signage, particularly older signage, is perceived by many to be unattractive.
- [23] The Board finds that the wording in the Calgary Trail Land Use Study is not such that it prohibits this type of Sign. Specifically the Board notes that the language of Section 3.5(b)(ii) specifically refers to discouraging the Use of Freestanding Billboards. This Sign replaced an older style free-standing billboard.
- [24] The existing Sign has existed for five years with no known complaints. One change that occurred since the last Development Permit was approved is that a new building was constructed to the south of the Sign with the result that, when the Sign is viewed from Calgary Trail, it is in front of the blank wall of the new building, which tends to mitigate any negative visual impact the Sign may have.
- [25] If City Council wanted to eliminate Freestanding Digital Signs along the Calgary Trail corridor, they could have done so as they did in the civic centre area by prohibiting Minor Digital On-premises Off-premises Signs (Section 59F.3(6)(a)). Instead, Council chose to make such Signs a Discretionary Use and to regulate them through the provisions of Section 59G.3. This shows an intent by Council to regulate Digital Signs along Calgary Trail by specifying maximum sizes and minimum separation distances rather than not allowing them at all.

- [26] Furthermore, the Board notes that the Calgary Trail Land Use Study is not a statutory plan within the definition of the *Municipal Government Act* (the “MGA”). Section 616(dd) of the MGA defines statutory plans as “an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4”. The Calgary Trail Land Use Study does not meet this definition.
- [27] Not only is the Calgary Trail Land Use Study not a statutory plan within the meaning of the MGA, it is not a Bylaw of the City of Edmonton either, being approved by a council resolution on Sept 11, 1984. Section 687(3) of the MGA sets out the documents that this Board must comply with; it does not list any document class that would include a document such as the Calgary Trail Land Use Study.
- [28] No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.
- [29] The Board finds that the proposed Discretionary Use is reasonably compatible with the surrounding Uses.
- [30] For all of the reasons 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 or affect the use, enjoyment or value of neighbouring parcels of land.



Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. K. Cherniawsky; Mr. R. Hobson; Mr. J. Kindrake; Ms. D. Kronewitt-Martin

CC: City of Edmonton, Development & Zoning Services, Attn: Ms. Mercier / Mr. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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-19-069

Application No. 288495856-002

An appeal to construct a 3 Storey General Retail Store Addition (388m², facing the lane), an outdoor amenity area (facing 82 Avenue), and exterior alterations to an existing Commercial Use building (facade improvement on south elevation), located at 10762 - 82 Avenue NW was **WITHDRAWN**.