



EDMONTON
TRIBUNALS

*Subdivision &
Development
Appeal Board*

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SDAB-D-17-031

Application No. 221482518-001

An appeal by Pattison Outdoor Advertising to relocate (1) Freestanding Minor Digital Off-premises Sign (6.1 m x 3 m), located at 5138 – Gateway Boulevard was **WITHDRAWN**.



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Date: June 8, 2017
Project Number: 244025691-001
File Number: SDAB-D-17-096

Notice of Decision

[1] On May 31, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **May 5, 2017**. The appeal concerned the decision of the Development Authority, issued on May 1, 2017, to refuse the following development:

To install (1) Freestanding Minor Digital Off-premises Sign (10.98 metres by 3 metres)

[2] The subject property is on Plan 209AN Blk 28A Lot 17, located at 13315 - 126 Avenue NW, within the IM - Medium Industrial Zone. The Yellowhead Corridor Area Structure Plan 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;
- The Appellant’s written submissions; and
- Online responses.

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – A Google Map of the area, submitted by Legal Counsel for the Appellant.

Preliminary Matters

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

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

Summary of Hearing

- i) *Position of Ms. Agrios, Legal Counsel, who was accompanied by Mr. Gallo, representing the Appellant, 1319416 Alberta Ltd.*
- [8] The Appellants are proposing to increase the Sign from 10 metres by 20 metres in size to 10 metres by 36 metres in size.
- [9] The Sign will be single sided facing south and will be located east on St. Albert Trail north of Yellowhead Trail.
- [10] Ms. Agrios referenced the refused Development Permit outlining the reasons for refusal (TAB 1 of her submission). With regard to the proposed Height, she stated there is no change to the 13.5 metres in Height from the previously approved Sign.
- [11] With regard to the separation distance, she stated that there is a static Pattison Sign located 112 metres from the proposed Sign.
- [12] Ms. Agrios referenced the entire Sign regulations (TAB 15).
- [13] Ms. Agrios referenced the Development Permit Application and submitted plans (TAB 2). The Sign is located in the back alley behind buildings approximately 100 metres away from St. Albert Trail. The site is zoned IM Medium Industrial Zone (TAB 5 and TAB 13).
- [14] The subject area is known as Hagman Estate Industrial which is an older area north of Yellowhead Trail.
- [15] The closest residential area is south of Yellowhead Trail which is separated with treed landscaping and sound barriers.
- [16] Ms. Agrios referred to the Development Permit history of the subject Site. In 2014, the Appellants received approval for a Roof Off-premises Sign. Condition No. 2 of the approved permit is that the Height shall not exceed the Height of the IM Zone (TAB 3). The proposed Sign is exactly the same Height but will be wider.

- [17] In 2016, the Board approved an application to replace Roof Off-premises Sign with a Freestanding Minor Digital Off-premises sign. One of the reasons given by the Board is that the neighbourhood where the Sign is located is within an exclusively industrial area, and therefore, the impact of an illuminated Sign is mitigated given that the majority of business operations close after dark when the illumination is most evident. There are no residential areas impacted by this sign (TAB 4).
- [18] Ms. Agrios referred to a series of aerial photographs showing the location of the proposed Sign behind the building and the Pattison Sign north of the subject Site (TAB 6).
- [19] There is a Hughes gas station, carwash, and a variety of industrial buildings surrounding the subject Site.
- [20] The Pattison Sign is a two sided Sign which is not visible from St. Albert Trail and is directed to traffic on Dunvegan Road.
- [21] Ms. Agrios referred to photographs of the subject Site and the back alley where the proposed Sign is located. The building west of the subject Site has no windows, the building south has no windows but large bay doors which is a mechanic shop, which will not be impacted by the proposed Sign (TAB 8).
- [22] Ms. Agrios referenced a photograph depicting the difference in width between the current width and the proposed width of the Sign. She also referenced a Sketch Plan showing a Sign Visibility Survey. With the 100 metre Setback, the sign will look smaller to oncoming traffic on St. Albert Trail (TAB 9)
- [23] The previous Board Decision states at paragraph 35 that the Board accepts, pursuant to Exhibit B, that a Sign, 13.5 metres in Height and located 100 metres from the road, would appear lower than a Sign 8 metres in Height adjacent to the road (TAB 4).
- [24] Ms. Agrios referenced several photographs showing signs over 8.0 metres in different zonings. Not all signs in this area are digital or advertising Signs, some are static general advertising Signs that are 13.0 metres in Height, and a Digital “Superboard Sign” that is 14 metres by 48 metres (TAB 11).
- [25] Ms. Agrios referenced the separation distance between the proposed Sign and the Pattison Sign. She stated that traffic will see the Sign but will not be a distraction. There is a 200 metre separation distance between the two viewing locations where each sign will be visible (TAB 10).
- [26] Ms. Agrios referenced a 2014 Court of Appeal Decision, *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 (“*Newcastle*”) that sets out the test for the variance (TAB 16).

- [27] There is support from one adjacent property and Transportation does not object to the proposed Sign.
- [28] There was one on-line response in opposition to the proposed development from Arby's restaurant on St. Albert Trail and Yellowhead but they did provide any reasons for the opposition.
- [29] There is no evidence that that the proposed Sign will negatively impact the area.
- [30] There is an existing Sign with the same Height as the proposed Sign at the subject Site.
- [31] The closest Digital Sign is approximately over 300 metres away on Yellowhead Trail. The only Sign in the separation distance is the Pattison Sign that is screened by trees and will not be visible at the same time as the proposed Sign.
- [32] Mr. Gallo stated that the proposed Sign will have a minimal impact on the neighbourhood. The Sign is partially built and the foundation has been poured.
- [33] In his opinion, refusing the proposed Sign will not prevent another Sign to be built or cause a proliferation of Signs in this area.
- [34] The photographs submitted show that the Sign can be viewed north 150 metres.
- [35] He referred to two photographs illustrating typical Sign locations in the City.
- [36] In his opinion, the proposed Sign will not have a negative impact on the neighbourhood.
- [37] In response to questions by the Board, he confirmed that they are in agreement to the proposed conditions outlined in the Development Officer's written submission.
- [38] In 2014, an application was approved for a Roof Sign. Then they decided they would prefer a Digital Sign, but a Roof Digital Sign was cost prohibitive.
- [39] In 2016 they received an approval for a Digital Sign and they have one year to start installing the Sign which is now taking place.
- [40] They would like to increase the size of the Sign to make it more marketable and more viable. The Sign will have third party advertising for businesses in the area. The Sign will project a static image that holds for 6 seconds. There will be no motion pictures on the Sign. An approved permit will be for a maximum of five years. If someone purchases the property and wants to redevelop the area, they should be aware of this condition.

- [41] With regard to Community Consultation, they stated that they spoke to the property owner immediately east of the subject Site who was not opposed to the proposed Sign. They did not speak to any of the other properties as they are tenants. They did not speak to Arby's restaurant as they just found out they submitted an on-line response in opposition to the proposed development.
- [42] The sign is in the back alley of an Industrial area with buildings all around it. The Sign will be calibrated to adjust in the daylight, and will not be a specific brightness all the time.
- ii) *Position of the Development Officer, Mr. Ahuja*
- [43] In his opinion, all the Sign measurements and distances are irrelevant because the *Edmonton Zoning Bylaw* is what he based his decision on.
- [44] Every Sign has restrictions and he could not approve a larger Sign than 10 metres by 20 metres.
- [45] He referenced the photographs submitted by the Appellant and stated that although the Sign is screened by trees, it will be seen more in the winter when the leaves fall off the trees.
- [46] With regard to the examples of Signs referenced in the Appellant's submission, he stated that a different *Bylaw* may have been in place at the time they were approved.
- [47] Although a variance in Height was granted for previous Signs that should not set a precedent in granting a variance in Height for this Sign.
- [48] In response to questions by the Board he stated that the proposed Sign is a Discretionary Use and with the Sign being Digital it will have a negative impact on the neighbourhood.
- [49] With regard to the response from Transportation, he stated that Transportation indicated that there was an issue with parking on the subject Site.
- [50] He disagreed that the proposed Sign will not lead to proliferation in the area. There is a 200 metre separation distance between Signs to ensure this will not happen.
- [51] In his opinion, the additional 160 square feet will have an impact on the area as the Sign will be larger.
- [52] He confirmed that the technology of the Sign is the same as other Signs in the City.
- [53] There are examples of other Signs around the City but are still different due to the size of the lot and the location of the Sign. The proposed Sign is angled to accommodate the site. He understood that the Appellant owns the adjacent site.

- [54] Transportation's response was based on the cone of vision and a traffic study.
- [55] He confirmed that there was no hardship to the Appellant with the separation distance to the Pattison Sign.

iii) Rebuttal of the Appellant, Ms. Agrios and Mr. D. Gallo

- [56] They reiterated that there are other Signs in the area that are the same Height as the proposed Sign.
- [57] They stated that the Development Officer confirmed that Transportation was not opposed to the proposed Sign.
- [58] With regard to parking, they stated that a previous Sign was approved and they only want to extend the width of the Sign.
- [59] There is over 10 metres at the bottom of the Sign which is enough room for vehicles to drive under.
- [60] There is a Sign along Yellowhead Trail that is 14 metres by 48 metres which is larger than the proposed Sign.
- [61] Considering a hardship for the Appellant is not part of the test for the Board when considering a variance.

Decision

- [62] 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 Minor Digital Off-premises Sign is approved until June 15, 2022.
 - 2) The Minor Digital Off-premises Sign shall comply in accordance to the approved plans submitted.
 - 3) The Minor Digital Off-premises Sign 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))
- 4) The Minor Digital Off-Premises Sign shall comply with the following conditions in consultation with the Transportation Planning:
- 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.

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).

[63] In granting the development, the following variances to the *Edmonton Zoning Bylaw* are allowed:

- 1. The maximum allowable Height of 8.0 metres as per Section 59G.3(6)(b) is varied to allow an excess of 5.5 metres, thereby increasing the maximum allowed to 13.5 metres.
- 2. The minimum allowable separation distance of 200 metres from any other Digital Sign greater than 8.0 square metres or Off-premises Sign as per Section 59G.3(6)(e) is varied to allow a deficiency of 88 metres, thereby decreasing the minimum allowed to 112 metres.

Reasons for Decision

- [64] A Minor Digital Off-premise Sign is a Discretionary Use in the IM Medium Industrial Zone.
- [65] The *Newcastle* decision clearly states that in determining variances, the Board is strictly bound by Section 687(3)(d)(i) which provides that in making its decision the Board must find that the proposed development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [66] The Board was not provided with any planning reasons for its consideration that demonstrate that the proposed Sign would have unduly interfered with the amenities of the neighbourhood or materially affected the use, enjoyment or value of neighbouring parcels of land.
- [67] The neighbourhood where the Sign is located is within an exclusively industrial area, and therefore, the impact of an illuminated Sign is mitigated given that the majority of business operations close after dark when the illumination is most evident. There are no residential areas impacted by this Sign. The Sign is near two busy roadways. The proposed development is reasonably compatible with the area and the surrounding businesses.
- [68] The proposed Sign is only visible to the north traffic travelling on St. Albert Trail.
- [69] The proposed Sign is mitigated by trees which will allow for additional separation distance from the nearest static Sign. The proposed Sign will not be visible at the same time as the nearest static Sign.
- [70] The Board accepts that a Sign, 13.5 metres in Height and located 100 metres from the road, would appear lower than a Sign 8 metres in Height, adjacent to the road.
- [71] The Board received one letter of support from a neighbouring property owner. The Board received an on-line response in opposition to the proposed development. However, they did not provide reasons for their opposition for the Board to evaluate.

[72] For the above noted reasons, the Board finds that the proposed development, with the variances and the imposed conditions, would 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.

A handwritten signature in blue ink, appearing to read "Winston Tuttle". The signature is fluid and cursive, with the first name "Winston" written in a larger, more prominent script than the last name "Tuttle".

Mr. W. Tuttle, 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.