



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 2, 2018  
Project Number: 286136272-001  
File Number: SDAB-D-18-181

**Notice of Decision**

- [1] On November 1, 2018, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on October 5, 2018. The appeal concerned the decision of the Development Authority, issued on September 14, 2018, to refuse the following development:

**Install 4 Satellite Signal Receiving Antennas on the roof of a Minor Impact Utility Service Building**

- [2] The subject property is on Plan 8722020 Blk 1 Lot 51A, located at 6720 - 137 Avenue NW, within the PU Public Utility Zone.
- [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 (the “*Municipal Government Act*”).

## Summary of Hearing

- i) *Position of Mr. Atkin, representing the Appellant, TELUS Communications, who was accompanied by Mr. McKee*

- [7] Mr. Atkin read from his PowerPoint Presentation that was submitted to the Board.
- [8] On September 14, 2018, the City of Edmonton refused TELUS' Application for Major Development Permit: Project Number 286136272-001, to install 4 Satellite Signal Receiving Dishes on the roof of the TELUS owned utility building located at 6720-137 Avenue NW.
- [9] The City refused the Application for the following reasons:
- a. The proposed development exceeds the maximum allowable height in the PU-Public Utility Zone (S. 50.5(5)).
  - b. The height of the proposed development's antenna exceeds the highest point of the subject building (S. 50.5(6)).
  - c. The Satellite Signal Receiving Antenna is visible from the Front Yard of the subject Site (S. 50.5(6)).
- [10] The City's refusal of the Application was based on *Edmonton Zoning Bylaw 12800*, TELUS agrees that under the Bylaw the dishes it wishes to install would be refused for the reasons the City has listed. However, it is TELUS' position that the Application detailing the dishes would be approved based on Telecommunications Brochure June 2009 and the Policy for Siting Telecommunications Facilities: Policy Number C471C.
- [11] The City has defined Telecommunications Facilities to "include wireless point to point commercial facilities, including towers and antenna structures that serve cellular and personal computer communications, as well as radio and television broadcasters." The dishes TELUS wishes to install are deemed Telecommunications Facilities and are subject to the Telecom Guidelines.
- [12] Upon reviewing the Telecom Policy, TELUS believes that it has satisfied the requirements under the Telecom Policy. Specifically section 4.02 of the Telecom Policy outlining 4.02 preferred locations:
1. Locations for a Telecommunication Facility should be chosen strategically to fulfill the purpose of this policy (Section 1, Purpose).

2. Where wireless service demand necessitates the erection of a new Telecommunication Facility, the following locations shall be preferred and should be reviewed for feasibility by an appropriate technical expert prior to consideration of any discouraged locations as described under subsection 4.03 (not in order of preference):
    - a. Antennas Co-located on existing Telecommunications Facilities, including, but not limited to, buildings, structures, overhead power transmission towers, broadcast towers, utility poles and light standards.
    - b. Site Co-location when co-location on existing structures is not feasible.
- [13] The Utility Building has been strategically chosen to facilitate the provisions of the Telecom Policy, and maximize efficiency in utilizing an existing TELUS building for the siting of the Antennas. The installation of the dishes will be advantageous for the community in ensuring that customers are able to stream CRTC mandated content. The Utility Building is the optimal location as the site already features an antenna tower, where consultation was conducted in accordance with CPC-2-0-03 - Radio communication and Broadcasting Antenna Systems.
- [14] Not only is the location a "Preferred Location" as detailed under section 4.02 of the Telecom Policy, it meets the exclusions for public consultation as detailed in section 11.01(b) and 11.01(d) of the Telecom Policy.
- [15] TELUS wishes to express the vital and essential role that the dishes will play in maintaining the TELUS network, reminding the City that all "towers and antennas in its network be sited, designed and oriented in such a manner that allows the wireless network to function properly. Any change in the characteristics of an individual radio station, especially the location and height of the antennas, critically and negatively impairs TELUS' wireless network thereby compromising its performance and reliability" (*TELUS Communications Company v Toronto (City)*, 2007 CanLII 6243 (ON SC)).
- [16] TELUS is hopeful that upon completing this Appeal process, along with the requirements under 9.02 of the Telecom Policy, that TELUS will have satisfied the requirements of the City resulting in the approval of the dish installations.
- [17] TELUS is appreciative of the City's comprehensive understanding of the long history of federal jurisdiction over telecommunications and the strong working relationship that TELUS and the City have built.
- [18] A roof-mounted Satellite Signal Receiving Antenna shall be allowed where the applicant can demonstrate that a ground-mounted unit would prohibit adequate reception of broadcasts. The impediments to the reception of broadcasts by a typical free-standing, ground-mounted unit shall be clearly identified on a diagram or Site plan, provided in accordance with subsection 13.2 of this Bylaw.

- [19] There is no other suitable location at the Londonderry site where the new dishes can be installed. The west side of the building contains parking and access to the rear of the building, as well as an area for vehicle loading. Satellite signals would be blocked if the new dishes were sited here.
- [20] The north side of the building provides staff parking for the 30+ people who work out of this location. There is also a large cell tower in this location which. Given the large obstruction posed by the tower and passing vehicular traffic, satellite signals would be blocked and would create service outages.
- [21] The closest residential property is approximately 80 metres from the proposed Londonderry development.
- [22] A tree buffer has been planted along 137th Ave to create a visual barrier between the residential properties and the road and commercial development.
- [23] TELUS Headend Operations Team in Edmonton requires direct access to the new dish farm to collect satellite signals by new dishes.
- [24] Additional TELUS sites in Edmonton were considered including Lendrum and Edmonton Main – neither of these sites is structurally sound to either add to or build new dishes.
- [25] If the dishes are not built, TELUS will not be able to deploy CRTC mandated content.
- [26] Live content channel map will be limited only to those channels available on fiber.
- [27] The satellite dish build will create jobs in Edmonton.
- [28] Mr. Atkin and Mr. McKee provided the following information in response to questions by the Board:
- a. The City has a Policy for receiving antennas and satellites that are suitable for residential area. They were directed to apply for the proposed development under the satellite category.
  - b. With regard to their mandate, they stated that changes have been made to accommodate the demands of their customers.
  - c. The tall cellular tower will remain in the existing location and the proposed satellite dishes will be situated in front of the tower.
  - d. The satellite dishes will be 4.5 metres wide in diameter, under the maximum allowed.

- e. No noise will be generated from the satellite dishes.
- f. The satellite dishes need a clear line of sight so the reception is not interrupted by vehicles or buildings. Mounting the satellite dishes on the rooftop will address this issue.
- g. They could not confirm if there were the same issues with the proposed dishes at the Lendrum location.
- h. Not having the satellite dishes will impact a large number of people.
- i. In their opinion, installing exterior lighting will attract more attention to the satellite dishes. They are agreeable to the remaining conditions suggested by the Development Officer if they apply to the proposed development.
- j. Using smaller dishes would not be suitable for communication purposes.

ii) *Position of the Development Officer, Mr. Welch*

[29] The Development Authority did not appear at the hearing and the Board relied on Mr. Welch's written submission.

### **Decision**

[30] 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 advisements:

1. An approved Development Permit means that the proposed development has been reviewed only against the provisions of the *Edmonton Zoning Bylaw*. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the *Municipal Government Act*, the ERCB Directive 079, the *Edmonton Safety Codes Permit Bylaw* or any caveats, covenants or easements that might be attached to the Site.
2. The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
3. Signs require separate Development Applications.

4. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this 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.

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

1. The maximum allowable Height as per Section 50.5(5) and Section 50.5(6) is varied to allow Height of 13.68 metres pursuant to the stamped and approved drawings.
2. The requirement that the proposed development not be visible from the Front Yard of the Site pursuant to Section 50.5(6)(c) be waived.

### **Reasons for Decision**

[32] This application proposes to install 4 Satellite Signal Receiving Antennas on the roof of a Minor Impact Utility Service Building, which is Accessory to Permitted Use in the PU Public Utility Zone.

[33] The Board grants all the variances for the following reasons:

- a. The satellite dishes will be located on the rear portion of the rooftop of the building and will not be as visible from the street.
- b. The satellite dishes will not exceed 5 metres in dimension which will mitigate any visual impact.
- c. The closest residential neighbourhood is south of 137 avenue which is a major arterial roadway. There are mature trees between the arterial roadway and service road which screens the residential neighbourhood.
- d. The Londonderry Shopping Center is north of the subject Site.
- e. The existing cellular tower will not be removed and is taller than the proposed satellite dishes.
- f. No letters were received in opposition to the proposed development and no one appeared in opposition at the hearing.

[34] Based on all of the above, it is the opinion of the Board, that the proposed development with the variances granted 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.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is positioned above the name of the signatory.

Mr. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board Members in Attendance:

Ms. G. Harris; Mr. L. Pratt; Mr. A. Nagy; Mr. R. Hachigian

CC: City of Edmonton, Development & Zoning Services, Attn: Mr. Welch / 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-18-182**

**Application No. 280399154-001**

An appeal to operate a Major Home Based Business (Personal Service Shop - jewellery and custom dresses, maximum 1 client per day), expires October 1, 2023 **was TABLED TO NOVEMBER 21 or 22, 2018.**