



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: November 30, 2017  
Project Number: 262394021-001  
File Number: SDAB-D-17-220

**Notice of Decision**

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 25, 2017**. The appeal concerned the decision of the Development Authority, issued on October 20, 2017, to refuse the following development:

**To construct a Semi-detached House with Unenclosed Front Porch and rear uncovered decks**

- [2] The subject property is on Plan 2668HW Blk 21 Lot 10, located at 4238 - 114 Avenue NW, within the RF1 Single Detached Residential Zone. The Mature Neighbourhood Overlay and Edmonton - Strathcona County Joint Planning Study Area Secondary and Garage Suites Overlay apply 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; and
  - The Development Officer’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 the Appellant, Mr. V. J. Mahaltra, representing Pro Consulting Design & Built, and Mr. R. Jani, son of the property owners:*

- [7] Mr. Mahaltra advised that he contacted the Sustainable Development Department about the feasibility of constructing a Semi-detached House at this location before preparing any drawings or submitted a development permit application. He was advised that there would not be a problem and was advised to proceed with the drawings and the development permit application.
- [8] Based on this advice, his clients purchased the property and the drawings were prepared and submitted.
- [9] An application was made for a demolition permit to demolish the existing house on the site and remove some of the utility lines.
- [10] Notice was then received from the City that the development was approved and he was asked to erect a sign on the property to notify property owners of the impending development.
- [11] Two days later he received an email from the Sustainable Development Department advising that the development permit application for a Semi-detached House had been refused. He was advised that previous notice of the approval had been sent in error.
- [12] A development permit application was also made for the garage and the fees were paid.
- [13] He questioned why he never received any indication that there was a possibility that the proposed development could be refused throughout the lengthy permitting process.
- [14] Mr. Mahaltra and Mr. Jani provided the following information in response to questions from the Board:
- a) He was advised that the email sent to advise him that the development had been approved had been sent in error.
  - b) The plans were prepared and submitted based on the information that he received that a Semi-detached House could be built on this lot.
  - c) Mr. Jani indicated that there is a significant amount of redevelopment occurring in the neighbourhood but he could not confirm the number of Semi-detached developments.
  - d) Mr. Jani talked to one neighbour who resides in the immediately adjacent Semi-detached House to the east who told him that she was happy that the existing house on the lot would be demolished.

- e) He never received any indication that a Semi-detached House could not be developed on this site.

ii) *Position of the Development Authority:*

[15] The Development Authority provided written submissions and did not attend the hearing.

iii) *Position of a neighbour who appeared in opposition to the proposed development, Ms. E. Mandrusiak and the owner of the property, Ms. I. Odyński:*

[16] Ms. Mandrusiak resides in the immediately adjacent Semi-detached House to the east that was built in 1962.

[17] She attended the hearing primarily to obtain information regarding the proposed development. She has had problems with previous renters and wanted to know if the proposed new house would be used as a rental property.

[18] At this point, the Presiding Officer clarified that the proposed Semi-detached House complies with all of the development regulations contained in the *Edmonton Zoning Bylaw* except the locational criteria for Semi-detached Housing in the RF1 Single Detached Residential Zone but that the Board does have the ability to waive the locational criteria to allow the development to proceed. The Presiding Officer also advised that problems with renters of the property should be reported to Bylaw Enforcement and are outside the purview of the Board.

[19] Ms. Odyński expressed concern that the proposed development had the potential to increase traffic on an already very busy roadway.

[20] Ms. Mandrusiak did not speak to any of her neighbours about the proposed development.

iv) *Rebuttal of the Appellant*

[21] Mr. Mahaltra advised that he had reviewed the recommended conditions contained in the Development Officer's written submission and was prepared to comply with all of the conditions if the development is approved.

## Decision

[22] 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 development shall be constructed in accordance with the stamped and approved drawings. This approval does not include future garage development and will require separate development and building permit approvals.
2. Within 14 days of the end of the notification period with no appeal and prior to any demolition or construction activity, the applicant must post on-site a development permit notification sign (Section 20.2).
3. The maximum Height shall not exceed 8.9 metres, in accordance with Section 52 of the Edmonton Zoning Bylaw 12800.
4. Platform Structures located within a Rear Yard or interior Side Yard, and greater than 1.0 metres above the finished ground level, excluding any artificial embankment, shall provide Privacy Screening to prevent visual intrusion into Abutting properties (Reference Section 814.3.9).
5. Single Detached Housing/Semi-detached housing requires 1 parking spaces per dwelling; parking may be in tandem as defined in Section 6.1.112 (Reference Schedule 1 of Section 54.2).
6. For Single-detached Housing, Semi-detached Housing and Duplex Housing, a minimum Private Outdoor Amenity Area shall be designated on the Site plan. Neither the width nor length of the Private Outdoor Amenity Area shall be less than 4.0 metres. The Private Outdoor Amenity Area may be located within any Yard, other than a Front Yard, and shall be permanently retained as open space, unencumbered by an Accessory Building or future additions (Reference Section 47).
7. Landscaping shall be installed and maintained in accordance with Section 55.
8. Frosted or opaque glass treatment shall be used on windows as indicated on the drawings to minimize overlook into adjacent properties (Reference Section 814.3.8).

**ADVISEMENT:**

1. Any future deck development greater than 0.6 metres (2 feet) in height will require development and building permit approvals.
2. Any future deck enclosure or cover requires a separate development and building permit approval.
3. This permit does not authorize any basement development. Any future basement requires development and building permit approvals.
4. This development has been approved as Semi-detached Housing and per the definitions of Secondary Suite in section 7.2(6) and Semi-detached Housing in section 7.2(7), this Use does not include Secondary Suites.

5. The maximum number of Dwellings per Site shall be two per Site.
6. The driveway access must maintain a minimum clearance of 1.5 metres from the service pedestal and all other surface utilities.
7. Lot grades must match the Edmonton Drainage Bylaw 16200 and/or comply with the Engineered approved lot grading plans for the area. Contact Drainage Services at 780-496-5576 or lot.grading@edmonton.ca for lot grading inspection inquiries.
8. Unless otherwise stated, all above references to "section numbers" refer to the authority under the *Edmonton Zoning Bylaw 12800*.
9. 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.
10. A Building Permit is required for any construction or change in use of a building. Please contact the 311 Call Centre for further information.

[23] In granting the development the following variance to the *Edmonton Zoning Bylaw* are allowed:

1. The locational criteria contained in Section 110.4(4) are waived to allow the development of a Semi-detached House at this location.

### **Reasons for Decision**

[24] Semi-detached Housing is a Discretionary Use in the RF1 Single Detached Residential Zone.

[25] Section 110.4(4) of the *Edmonton Zoning Bylaw* states that:

“Semi-detached Housing and Duplex Housing shall only be located:

- a) on Corner Sites;
- b) on Sites abutting an arterial or service road;
- c) where both Side Lot Lines abut existing Duplex or Semi-detached Housing; or
- d) where a minimum of one Side Lot Line:

i) abuts a Site where Row Housing, Apartment Housing, or a commercial Use is a Permitted Use, or

ii) is not separated from a Site where Row Housing, Apartment Housing or a commercial Use is a Permitted Use by a public roadway, including a Lane, more than 10.0 metres wide.”

- [26] The proposed development complies with all of the development regulations, including Height, Site Coverage and Setbacks, with the exception of the Locational Criteria pursuant to Section 110.4(4).
- [27] The Board has waived the locational criteria contained in Section 110.4(4) of the *Edmonton Zoning Bylaw* for the following reasons:
- a) The subject site abuts an existing Semi-detached House on the lot to the east.
  - b) The subject site is located two lots from the corner, not in the middle of the block.
  - c) One affected neighbour attended the hearing primarily to obtain information about the proposed development and advised that she did not have any concerns regarding the required variances. One concern related to increased traffic. The Board notes that no parking variance is required and other forms of Permitted developments on the site would have the same traffic effect. Another concern was raised regarding some problems with previous renters of the property. The Board advised that these concerns are outside the purview of the Board and should be directed to the Bylaw Enforcement Department.
  - d) The Board notes that there was no other opposition to the proposed development.
- [28] Based on the above, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and is of the opinion that granting the required variances 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. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Ms. S. LaPerle, Mr. A. Nagy, Mr. L. Pratt, Ms. E. Solez

**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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Date: November 30, 2017  
Project Number: 258162485-001  
File Number: SDAB-D-17-221

**Notice of Decision**

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **October 18, 2017**. The appeal concerned the decision of the Development Authority, issued on October 10, 2017, to refuse the following development:

**To install (1) Freestanding Minor Digital Off-premises Sign (7.6 metres by 3.7 metres facing Southwest) (PATTISON-HOLIDAY INN)**

- [2] The subject property is on Plan 9822688 Lot B, located at 4485 - Gateway Boulevard NW, within the CHY Highway Corridor Zone. The Major Commercial Corridors Overlay 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 (the “*Municipal Government Act*”).

**Summary of Hearing**



i) *Position of the Appellant, Mr. J. Murphy, Legal Counsel for Pattison Outdoor Advertising:*

- [7] At the outset Mr. Murphy advised the Board that the proposed Sign is a Freestanding Minor Digital On-premises Off-premises Sign and not a Freestanding Minor Digital Off-premises Sign as noted on the development refusal. The proposed Sign will include advertising for the Holiday Inn and he asked the Board, if they allow the appeal, to categorize the application correctly.
- [8] Mr. Murphy reviewed his written submission in detail.
- [9] The development application was refused because of a deficiency in the minimum required separation distance from other Digital Signs and Off-premises Signs. However, the digital hotel Signs referenced in the refusal only contain a “crawler” component of large, On-premises Signs advertising for the Radisson and Delta Hotels. It was his opinion that these are not Digital Signs and received approval as Changeable Copy Signs under the previous *Land Use Bylaw*. Only a small portion of the Signs have a crawler screen with rotating messages.
- [10] During initial discussions with the Development Officer who was reviewing this application, Pattison Outdoor Advertising agreed to remove an existing Sign on the CPR right of way, located east of the subject site, in exchange for approval of this Sign. If the proposed Sign is approved by the Board, this Sign will be removed.
- [11] The Development Officer has the authority to reduce the required setback from a Major Arterial Roadway to 4.5 metres.
- [12] It was his opinion that the Calgary Trail Land Use Study does not apply.
- [13] The proposed Freestanding Minor Digital On-premises Off-premises Sign is a Discretionary Use in the CHY Highway Corridor Zone.
- [14] The maximum allowable Sign Area is 65 square metres and the proposed Sign is approximately half that size. Drivers that use this roadway are accustomed to seeing these types of Signs.
- [15] Section 59F.3.6(d)(ii) states that the maximum area for Signs that are Freestanding is 65 square metres. The maximum combined Area of Digital Sign Copy and any other type of Copy on the same Sign face shall not exceed 65 square metres. It was his opinion that this regulation becomes interesting when classifying the existing Signs at the Radisson and Delta Hotels because this clause states that two types of Copy can be included on the Sign.
- [16] Section 687(3)(a.1) of the *Municipal Government Act* states that in determining an appeal, the subdivision and development appeal board must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect.

- [17] Section 616(dd) of the *Municipal Government Act* defines a statutory plan as an inter-municipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4.
- [18] The Calgary Tail Land Use Study is not one of the documents listed in the definition. City Council passed the study by resolution and it is therefore not binding on the Board.
- [19] The *Newcastle Centre GP Ltd. v Edmonton (City)*, 2014 ABCA 295 Court of Appeal decision was referenced. Clause 6 of the decision states that it is an error for the Board to presume that using its variance power creates a presumption of harm to the public and that they cannot intervene unless that presumption is rebutted by the Applicant. Section 687(3)(d) of the *Municipal Government Act* outlines the test for the Board which is to determine whether or not a proposed development will unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
- [20] Planning Coordination (Transportation) has no objections to the proposed Sign at this location with the imposition of some standard conditions as outlined in their email dated August 24, 2017.
- [21] Photographs contained in the written submission were referenced to illustrate the location of the site, the proposed Sign and the two existing hotel Signs located west of Gateway Boulevard. All of these sites are large, contain large buildings and are separated by Gateway Boulevard that is a wide 4 lane roadway. It was his opinion that the proposed Sign has to be considered in this context. The proposed site is not located close to any residential zones. Photographs were referenced to provide a view of the existing hotel Signs that contain crawler message sections and the subject site from Gateway Boulevard and Whitemud Drive. It was his opinion that both of the existing hotel Signs would have been classified as Freestanding On-premises Signs with changeable copy under in the previous *Land Use Bylaw*.
- [22] A photograph taken from Whitemud Drive shows the location of an existing Sign that Pattison Outdoor Advertising will remove if the proposed Sign is approved.
- [23] Section 813.4(6)(a) states that “Setbacks with a minimum width of 7.5 metres shall be provided adjacent to Major Arterial Roads within the Major Commercial Corridors and adjacent Arterial Roads that directly intersect such Major Arterial Roads. However, the Development Officer may use variance power to reduce this Setback requirement to a minimum Width of 4.5 metres provided that: i) the average Width of the Setback is not less than 6.0 metres and, ii) this Setback width relaxation is required to allow for a more efficient utilization of the Site and the relaxation shall result in an articulation of the Setback width that shall enhance the overall appearance of the Site”. Complying with this requirement would result in the proposed Sign being located in the hotel parking lot which, in his opinion will not allow for an efficient utilization of the Site or enhance the overall appearance of the site. In this circumstance, the Major Commercial Corridors

Overlay allows a variance in the setback requirements. In this circumstance, reducing the setback will not negatively affect the use and enjoyment of other properties because the sites are so large and the amenities of this neighbourhood are existing large hotels.

- [24] It has always been his assumption that the existing hotel Signs that include crawlers would be classified as Digital Signs based on the Use class definitions for Major and Minor Digital Signs contained in Section 7.9(5) and (6) of the *Edmonton Zoning Bylaw*. However, Section 6.2(2), General Sign Definitions defines Changeable Copy as:

“that portion of a Sign on which Copy can be readily changed manually through the utilization of attachable characters, or automatically through the electronic switching of lamp banks or illuminated tubes. Changeable Copy includes mechanically controlled time and temperature displays”.

- [25] Therefore, *Land Use Bylaw 5996* would have classified the Signs at the Delta and Radisson Hotels as Freestanding On-premises Signs with changeable copy.

- [26] It was his opinion that the minimum separation distance requirements do not apply because the two closest Signs are Freestanding On-premises Signs that contain changeable copy. However, even if the Board finds that these Signs are Digital Signs, a variance could be granted if it was determined to be appropriate.

- [27] The proposed Sign is a Discretionary Use in this zone and the Board would have to base a refusal on valid planning reasons.

- [28] The recommended conditions have been reviewed and are acceptable.

- [29] Mr. Murphy provided the following information in response to questions from the Board. Section 59F.2(3)(c) that requires a 45 metre radial separation distance from any other Freestanding On-premises Sign, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs or Minor Digital On-premises Off-premises Signs that is a Freestanding Sign on the same Site does not apply because it is not reciprocal and does not apply to Discretionary Signs. In this situation, it would be unfair to require a 45 metre separation distance from the existing hotel identifier Sign to the site of the proposed Sign. Mr. Murphy referenced SDAB-D-15-003. In that case, a panel of this Board found: “The Board finds that a variance is not required to the minimum 45 metre radial separation distance from the Husky Sign, pursuant to Schedule 59F.2(3)(c). That regulation applies to Permitted Uses. Based on the evidence provided the proposed development is a Discretionary Use in this Zone and therefore subject to the regulations under Schedule 59F.3 not Schedule 59F.2. Schedule 59F.3 does not include a reciprocal 45 metres radial separation distance.”

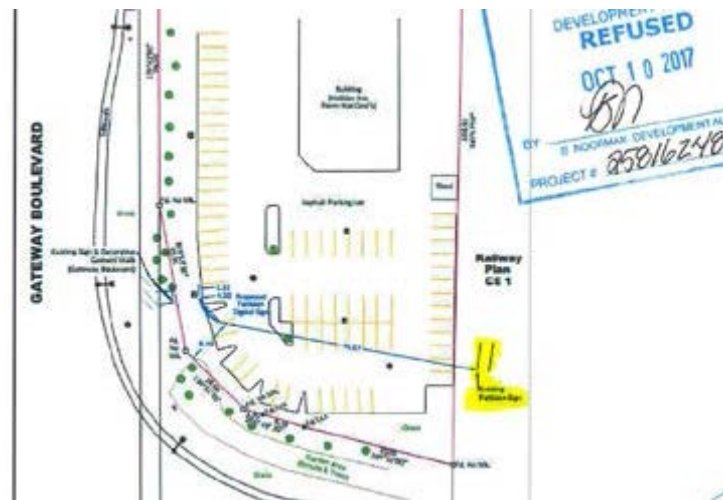
ii) *Position of the Development Authority:*

[30] The Development Authority provided written submissions and did not attend the hearing.

**Decision**

[31] 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 development is approved as a Minor Digital On-premises Off-premises Sign.
2. Prior to the review and issuance of the Building Permit and installation of the Sign, the applicant shall demonstrate, to the satisfaction of the Development Officer that the existing Pattison Sign identified on the application submitted on Railway Plan CE1, is removed and cleared of all debris. (See location highlighted in yellow):



3. The permit will expire on November 30, 2022.
4. The proposed Minor Digital On-premises Off-premises Sign shall comply in accordance with the stamped and approved plans submitted.
5. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3footcandles 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)).
6. 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)).
7. Minor Digital On-premises Off-premises Sign Signs shall have a Message Duration greater than or equal to 6 seconds. (Reference Section 7.9(7)).
  8. The Minor Digital On-premises Off-premises Sign 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)).
  9. The following conditions, in consultation with Planning Coordination (formerly Transportation), shall apply to the proposed Minor Digital On-premises Off-premises Sign, in accordance to Section 59.2.11:
    - a) That, should at any time, Planning Coordination (Transportation) determines 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 Planning Coordination (Transportation).
    - b) That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Planning Coordination (Transportation) 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, Planning Coordination 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).

**Reasons for Decision**

- [32] Based on the evidence provided, this development has been approved as a Minor Digital On-premises Off-premises Sign.
- [33] A Minor Digital On-premises Off-premises Sign is a Discretionary Use in the CHY Highway Corridor Zone.
- [34] Based on a review of the evidence provided, the Board has determined that the proposed Sign complies with all of the regulations found in Schedule 59F for the following reasons:
- a) The Board finds that the two existing Signs located on the west side of Gateway Boulevard and identified by the Development Officer as being located less than 200 metres from the site of the proposed Sign are Freestanding On-premises Signs with Changeable Copy based on Section 6.2(2) of the *Edmonton Zoning Bylaw* that defines Changeable Copy as:

“that portion of a Sign on which Copy can be readily changed manually through the utilization of attachable characters, or automatically through the electronic switching of lamp banks or illuminated tubes. Changeable Copy includes mechanically controlled time and temperature displays”.

Therefore, the proposed Sign complies with the requirements of Section 59F.3(6)(e) and a variance is not required.

  - b) Section 813.4(6)(a)(ii) of the *Edmonton Zoning Bylaw* allows the Development Officer to reduce the Setback requirement to a minimum Width of 4.5 metres provided that this Setback width relaxation is required to allow for a more efficient utilization of the Site and the relaxation shall result in an articulation of the setback width that shall enhance the overall appearance of the Site. Based on the evidence provided, the proposed Setback will ensure that the proposed Sign is not located in the hotel parking lot which will result in more efficient use of the site and improve the overall appearance of the site.
  - c) A variance is not required to the minimum 45 metre radial separation distance from the existing Holiday Inn Sign, pursuant to Schedule 59F.2(3)(c). That regulation applies to Permitted Uses. Based on the evidence provided, the proposed development is a Discretionary Use in this Zone and therefore subject to the regulations under Schedule 59F.3 not Schedule 59F.2. Schedule 59F.3 does not include a reciprocal 45 metre radial separation distance.
  - d) The proposed Sign is located within the Calgary Trail Land Use Study. Section 3.4(b)(ii) states that: Greater attention shall be given to improving the location, siting, Signage, comprehend-ability [sic] and design of Signage in the corridor by discouraging the use of portable Signs and freestanding billboards (billboards are

considered Off-premises Signs). The Board acknowledges that the Development Authority had to consider the Calgary Trail Land Use Study when reviewing this application. However, the Calgary Trail Land Use Study is not a Statutory Plan that limits the discretionary powers of the Board pursuant to section 687(3)(a.1) of the *Municipal Government Act* which states that: In determining an appeal, the Subdivision and Development Appeal Board must comply with the land use policies and statutory plans, and subject to clause (d), the land use bylaw in effect.

[35] If the Board is wrong in making the determination that the proposed Sign complies with all of the regulations contained in Schedule 59F, the required variances would have been granted for the following reasons:

- a) The Applicant has agreed to remove the existing static Sign located east of the subject site as a condition of approval.
- b) Transportation Planning and Engineering had no objection to the proposed Minor Digital On-premises Off-premises Sign at this location subject to several conditions that have been agreed upon by the Applicant and imposed by the Board.
- c) The subject site is large and is surrounded by many other large commercial hotel sites and wide arterial roadways. There is no risk that the proposed development will affect any residential properties.
- d) No letters of objection were received from any of the neighbouring property owners and no one appeared in opposition to the development.

[36] For the reasons above, the Board concludes that the proposed development with the conditions imposed is reasonably compatible with the neighbourhood and 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. B. Gibson, Presiding Officer  
Subdivision and Development Appeal Board

Board members in attendance: Mr. A. Nagy, Mr. L. Pratt, Ms. E. Solez, Ms. S. LaPerle

**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.*





**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Edmonton, AB T5J 0G9  
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3537  
[sdab@edmonton.ca](mailto:sdab@edmonton.ca)  
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Date: November 30, 2017  
Project Number: 168014476-001  
File Number: SDAB-S-17-006

**Notice of Decision**

- [1] On November 15, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **August 10, 2017**. The appeal concerned one condition attached to the decision of the Subdivision Authority, issued on July 27, 2017, to approve the following subdivision:

**Create 99 single detached residential lots, 168 semi-detached residential lots, two (2) Municipal Reserve (non-credit) lots, one (1) multiple family residential lot and three (3) Public Utility Lots**

- [2] The subject property is on Plan 2310TR Lot B, located at 3304 - 91 Street SW, within the AP Public Parks Zone; PU Public Utility Zone; RA7 Low Rise Apartment Zone; RF4 Semi-detached Residential Zone; and the RSL Residential Small Lot Zone.
- [3] The following documents were received prior to the hearing and form part of the record:
- Copy of the approved Subdivision letter with attachments, proposed plans;
  - The Subdivision Authority’s written submissions;
  - A written submission from the City of Edmonton Law Branch; 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 678 of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”).

- [7] At the outset of the hearing the Presiding Officer asked Mr. Gunther, City of Edmonton Law Branch, if any of the recent amendments to the *Municipal Government Act* would have an impact on this appeal hearing. Mr. Gunther indicated that none of the amendments had any impact on the subdivision approval or the appeal hearing.

### **Summary of Hearing**

- i) *Position of the Appellant, Mr. B. Dibben, representing Select Engineering and Mr. R. Wyton, representing Essex Appraisal:*

- [8] Mr. Dibben has appealed the first condition of the Subdivision Approval on behalf of their client. That condition requires the owner to provide money in place of Municipal Reserve (MR), in the amount of \$840,294.00 representing 1.62 hectares pursuant to Sections 666 and 667 of the *Municipal Government Act*.
- [9] The appraisal requested by the Subdivision Authority pursuant to Section 666 and 667 of the *Municipal Government Act* was prepared by Essex Appraisal and submitted on June 27, 2017.
- [10] Mr. Wyton advised that the appraisal he prepared valued the land at \$180,000 per acre and he proceeded to review his report.
- [11] His evaluation deviates from the independent appraisal prepared for the City in terms of the information that was relied upon and the interpretation of the development horizon of the land. A key point of contention is that the City and their appraiser had an unwillingness to accept some of the details of the sale transaction. The land sold 9 months prior to the appraisal and they were not willing to consider some of those details.
- [12] He reviewed the details of the transaction at the beginning of his investigation. The subject land transferred ownership from the Canadian Conference of the Mennonite Brethren Church of North America to Carrington Land Ltd. on September 14, 2014 for \$180,000 per acre. The appraisal was completed in April 2015, which is a minimal amount of time in speculative land evaluations. With that as the primary indication to start the investigation, comparable indicators were reviewed to determine if that is accurate when looking at other transactions.
- [13] This is a 40 acre parcel of land zoned AG Agricultural pre-subdivision.
- [14] The difference in their appraisals is a result of how the comparables were applied. Most of the comparables he used were located in the southeast quadrant of the city. The future use of the lands located west of the subject site was not expected to affect the value or the potential use of the land.

- [15] Relevant sales comparables used were land that sold in southeast Edmonton. The average price for these lands was \$153,000 per acre. However, these sites were slightly inferior to the subject land which would therefore have a higher value. He and the independent City appraiser disagree on the interpretation of the sale of the property and with comparable zonings at the time of the sale.
- [16] Key factors included a list of pros and cons for the subject lands. Pros included the fact that site servicing was located close to the lot lines. However, this was overestimated because a collector road network will have to be developed to access the land. There is no municipal road access at all. All of the other comparables that he relied on have direct access to a collector roadway. The developer has to pay to develop the roads which will result in more time being required to develop the land which is a significant obstacle.
- [17] The Neighbourhood Structure Plan designates the immediately adjacent site to the west as an industrial use and requires a buffer zone between the two sites. This is land that the developer has to surrender without compensation. The fact that this property is zoned for an industrial use is also detrimental to development of the subject land. The provision of a 60 foot buffer is not sufficient to completely minimize the impact of an industrial site that is immediately adjacent to residential properties.
- [18] Oil prices dropped in 2014 and the real estate market declined. Sales volumes were down in 2015 compared to 2013 and 2014. The subject land was purchased when oil prices were high in September 2014. The appraisal was done 8 months later, after the price of oil had dropped substantially and there was not much strength in the market at that time.
- [19] The land sold for \$180,000 per acre on September 14, 2014 and is considered a non-arm's length transaction. It was his opinion that this transaction tells a lot about the value of the property but the City's appraiser and the independent appraiser hired by the City both chose to ignore this information. The independent appraiser states that the sale price was low but completely dismisses the sales transaction.
- [20] He discussed the sale with senior members of the Mennonite Church involved in the sale, Qualico Properties, Carrington Properties and the realtor. The land was listed in 2012 for \$7 million. There was a fair bit of interest but the developers who were interested wanted to tie up the sale with conditional contracts subject to rezoning. The Mennonite Church was reluctant and the offers were rejected. The land was then on the market for one year after which an offer from Qualico was accepted at \$110,000 per acre. After the six month due diligence period, a revised offer for \$185,000 per acre was presented. However, at the end of the second six month due diligence period, Qualico chose not to proceed with the sale and walked away because of concerns regarding the wet lands located in the northwest corner of the site, environmental reserves and the amount of land that would be lost as a result. It was their opinion that the development horizon was much too distant. Following this, Carrington Properties signed an agreement to purchase the land with a six month due diligence period and then requested a further three month period after which an offer was made to purchase the land at \$180,000 per acre. The Menonite Church agreed to the sale because they feared that the value of the land was

starting to decline. The fact that two large development companies spent months scrutinizing the land with millions of dollars at stake is a better indicator of the value of the land than anything that can be determined by an appraiser.

[21] It was his opinion that the Mennonite Church decided to sell the land at \$180,000 per acre because that was as much as they could get for the land.

[22] Mr. Wyton provided the following information in response to questions from the Board:

- a) An appraisal is an estimation of how buyers and sellers will react to land. Once a property is sold, it becomes a comparable for another property.
- b) The actions of the buyer and seller need to be weighed to ensure that there were no undue influences. In this case, there were no undue influences.
- c) The land just received subdivision approval in July 2017. Zoning was approved in 2015. In 2015, the development horizon for the land was two to three years. However, the land is still not subdivided and is not being marketed.
- d) An appraisal is a professional opinion of the value. There are no industry standards regarding accuracy but he personally strives to be accurate within 10 percent.
- e) The land was not readily developable in 2015 because of the road access. Even though the subdivision has been approved, the developer still faces several issues including storm water drainage.

ii) *Position of the Subdivision Authority, represented by Mr. M. Gunther, Legal Counsel, Mr. Ken Morris, City of Edmonton, lead in-house Appraiser and Mr. P. Woodlock, Harrison Bowker:*

[23] Mr. Gunther acknowledged that this was an unusual matter to be before the Board. He explained that it was not the intention of the Subdivision Authority to squeeze developers for every possible penny. However, it is the role of the Subdivision Authority to determine how much money is owed in place of Municipal Reserve for a subdivision.

[24] The issue before the Board in this appeal is the market value of the subject property. This is necessary to determine the money in place of municipal reserve payable as a result of this subdivision application.

[25] Money in place of municipal reserve is authorized pursuant to section 666 and section 667 of the *Municipal Government Act*. It is often referred to as “cash-in-lieu”. It is payable in circumstances where a subdivision does not contain adequate (10 percent) municipal reserve land. The monies are used to facilitate the purchase of park land in locations outside the boundaries of the subdivision. It is a policy of both the *Municipal Development Plan (The Way We Grow)* and the *Orchards at Ellerslie Neighborhood*

Structure Plan that municipal reserve and/or cash-in-lieu will be required from developers at the time of land subdivision.

- [26] Pursuant to section 666 and section 667 of the *Municipal Government Act*, a subdivision applicant must provide a market value appraisal to allow the subdivision authority to calculate the amount of cash-in-lieu owing. On subdivision approvals in the City of Edmonton with no municipal reserve, a developer will be expected to contribute 10 percent of the “appraised market value” as cash-in-lieu.
- [27] In June 2017, the Appellant provided an appraisal to the City of Edmonton that was prepared by Essex Appraisal. The valuation date of the appraisal was April 30, 2015. The appraisal was submitted in accordance with the requirements of the *Municipal Government Act* that it reflect the value of lands within 35 days of the date of the subdivision application. The date of submission on this application was April 27, 2015.
- [28] Upon review by the City’s lead in-house professional appraiser, Mr. Morris, it was determined that the market value identified in the appraisal was substantially below market values for similar parcels. Mr. Morris subsequently conducted independent due diligence into the comparison sales used by Essex Appraisal. Concerns arose that these sales did not reflect properties with a similar development horizon as the subject site; included a property designated for future industrial use, sold to avoid foreclosure; and did not serve to accurately demonstrate the market value of the subject site.
- [29] Mr. Morris’ assessment was that the Essex Appraisal did not reflect market value of the subject land. Considerations in making this determination included an appraisal submitted for the adjacent lands immediately to the north, suggesting a valuation of \$215,000/acre, and the City land dedication credit rate in Southeast Edmonton – accepted by the Urban Development Institute at \$250,000/acre. (This rate is set by a joint committee made up of members of the land development industry (UDI) and the City of Edmonton. Rates are set for SW, SE, NR and NE, on the basis of average development land values for each quadrant.)
- [30] Mr. Morris subsequently advised the developer that the city would accept a valuation of \$210,000/acre, as this was more consistent with an accurate market value for the subject lands. This resulting subdivision condition was that the developer pays \$840,294 cash-in-lieu of municipal reserve.
- [31] Subdivision approval was granted on July 27, 2017 and on August 9, 2017, the Applicant appealed the cash-in-lieu condition based on the market value of the subject property.
- [32] The City subsequently commissioned an independent appraisal of the subject lands, at its own expense to determine the appropriateness of Mr. Morris’ assessment of market value. Mr. P. Woodlock, a professional appraiser with Harrison Bowker was retained to appraise the property.

- [33] Mr. Woodlock was directed to prepare the appraisal with a valuation date of April 30, 2015 and in order to retain independence he was provided with minimal information on the background of the matter. He was not provided with a copy of the Essex Appraisal, the City did not disclose the cash-in-lieu sought, the basis for the calculation or any comparable property sales. He was not advised that the City believed market value for the land to be approximately \$210,000/acre. He was informed that the appraisal was required to calculate cash-in-lieu of Municipal Reserve to assist the Board with the dispute on the market value of the property.
- [34] Mr. Woodlock's appraisal was submitted to the City of Edmonton Law Branch on November 8, 2017 and has been provided to the Board and the Appellant. His appraisal suggests a market value of \$230,000/acre. Based on this information, the Subdivision Authority decided that it was in the public interest to proceed with the appeal.
- [35] Mr. Morris questioned the issues raised by Mr. Wyton regarding road access to the site and the location of the industrial land adjacent to the subject site as potentially affecting market value because these were not addressed in his initial appraisal.
- [36] The site can be accessed from 91 Street which is a rural cross section roadway. Adjacent properties to the west are zoned as light industrial zoning in the Neighbourhood Structure Plan and will be developed similarly to the already developed industrial land in this area. Some anecdotal information was provided regarding potential development of the land but it was second hand information and he asked the Board to treat it accordingly.
- [37] It was his opinion that this land became developable in April 2015 and therefore an appraisal has to be prepared based on the fact that the land is immediately developable.
- [38] He acknowledged that there is likely some correlation between the price of oil and land prices but it was his opinion that the degree is tenuous.
- [39] Mr. Gunther and Mr. Morris provided the following information in response to questions from the Board:
- a) The *Municipal Government Act* is silent on the exact process on how to approach a situation where the appraisal required pursuant to section 667 does not reflect market value – both on the part of the municipality and on the part of the Board.
  - b) “Market value” is defined in the *Municipal Government Act*, section 1(1)(n) as:

The amount that a property, as defined in section 284(1)(r), might be expected to realize if it is sold on the open market by a willing seller to a willing buyer.
  - c) If the municipality does not accept that the appraisal represents “market value”, and the developer does not agree with another method of valuation, pursuant to section 667(1)(b) of the *Municipal Government Act*, then the appeal process through the Board is the only method of reconciling the dispute.

- d) Section 680(2)(e) of the *Municipal Government Act* provides authority for the Board to “confirm, revoke or vary any condition of a subdivision approval” or to substitute a condition of its own”.
- e) Mr. Morris was concerned when the developer’s appraisal valued the land at \$180,000/acre because southeast Edmonton is perceived as a strong market and land is typically valued at between \$225,000 and \$250,000/acre. The immediately adjacent parcel of land was valued at \$225,000/acre.
- f) He acknowledged that there is some undevelopable land and a buffer zone located on the west side of the property. The developer will receive land dedicated for the storm water management system.
- g) The subject site is immediately developable. The valuation of the immediately adjacent property at \$215,000/acre had a considerable impact on his decision.
- h) It was his opinion that the land did not appreciate in value between September 14, 2014 and April, 2015.
- i) A general appraisal principle is that sale price is the best indicator of market value but it is not the only indicator. It was his opinion that the Essex appraisal placed too much weight on the sale price of the land.
- j) Based on the sale of two adjacent parcels of land two months prior to the sale of this land, it is most likely that the value of the subject land is \$215,000/acre.
- k) Mr. Morris did meet with Mr. Wyton in an attempt to negotiate a settlement without success. If the independent appraisal had valued the land lower than the value determined by the City, there would have been an opportunity to resolve the matter. However, the independent appraisal placed a higher value on the land and the decision was made to proceed with the appeal and allow the Board to determine the appropriate value.
- l) In this case, the Board’s discretion includes the authority to a) adopt the Appellant’s argument and reduce the valuation to \$180,000/acre; b) uphold the City’s condition intact, and accept the valuation of \$210,000/acre, or c) vary the condition to reflect the appraised market value of \$230,000/acre.
- m) The Supreme Court of Canada decision in *Edmonton v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, accepted the submission that the word “change” in the Municipal Government Act (vis-à-vis an assessed value) included the power to *increase*. As *change* and *vary* are synonymous, this power is undoubtedly afforded to the Subdivision and Development Appeal Board as well.

- [40] Mr. Woodlock explained the process used to determine the retrospective market value of the subject land. Based on his research and analysis, it was his opinion that the “as is” market value of the land is \$230,000/acre.
- [41] As of the effective appraisal date, April 30, 2015, the property was comprised of one tract of development land. Properties to the north were being developed and the subject property would have been considered to have an imminent development horizon.
- [42] One of the external influences that will affect the value of this land is the high voltage transmission line located on the east side of the parcel. This typically decreases the value of residential lots. The other external influence is the industrial land located west of the subject site.
- [43] Although the immediately adjacent land is zoned industrial, the nature of development is more commercial than industrial and a relatively wide buffer will also flank the site. Therefore it will not negatively affect the value of the subject land or the future potential use. A relatively wide buffer will flank also the subject site.
- [44] Portions of market analyses from 2015 contained in his written submission were referenced. Retrospective market analysis is an actual opinion as of that date. These illustrate that the market was softening but there was no depreciation in raw land values.
- [45] A chart depicting development land sales within Edmonton proper between 2010 and 2015 was referenced to illustrate that few land developers had reduced their “finished” lot values and therefore no depreciation in raw land sales had been recorded.
- [46] The descriptions of the six value indicators, their respective unit selling prices per acre, the individual adjustments for differences and the resulting adjusted selling prices for each and their locations were reviewed. Value per developable acre ranged from \$195,000/acre to \$310,000/acre.
- [47] He agreed that the sale of the subject site is relevant. The subject property sold in September 2014 for \$180,000/acre. Discussion with the vendor indicated that the property was on the market for some time prior to being a pending sale for a longer period of due diligence. The sale price is considered low.
- [48] Based on his analysis it was his opinion that the retrospective “as is” market value (as of April 30, 2015) for the subject land is \$9,220,000 or \$230,000/acre.

*iii) Rebuttal of the Appellant*

- [49] Mr. Wyton reviewed the comparables used by Mr. Woodlock.
- a) Comparable 1 is inferior to the subject land, is in a better location but is farther removed from the development horizon than the subject site.



- b) Comparable 2 sold at \$225,000/acre in 2014. The subject land will have superior land uses, including a school site that will generate a marketing boom. The development horizon is much shorter and the lots will be brought to market much quicker.
- c) Comparable 3 was rezoned in 2014 and sold in 2015 with residential zoning already in place. It was subdivided six months after the purchase. It is not comparable to the subject site in terms of the zoning and it was not an at arm's length sale. This site should not be considered.
- d) Comparable 4 is located some distance from the subject site and involved a transaction between two partners in a joint venture. It was not taken to market and there was no opportunity for others to bid on the land. This was not an at arm's length sale and should be dismissed.
- e) Comparable 5 is a superior site that fronts onto Rabbit Hill Road and includes a commercial site and a multi-family site. The price for this land was negotiated in 2012. The land is superior to the subject site and a three year old sale date is inadmissible.
- f) Comparable 6 contains the best speculative land sites in the City. There is a large commercial site, a high rise apartment site, three multi-family sites and it is not comparable to the subject land.

[50] Mr. Woodlock chose to use these comparables over the purchase of the subject land.

[51] An appraisal is a collection of information including all indicators of value that directs you to a good conclusion of value and the purchase price of the land is part of that collection of information. This tells you exactly what the buyer and the seller were thinking at the time of the sale and to ignore that information is wrong. This is the strongest indicator of value and has to be considered.

[52] Mr. Wyton provided the following information in response to questions from the Board:

- a) His opinion regarding the impact of the industrial land located west of the site was not included in the initial appraisal because he had no idea that the report would be under such scrutiny. Buyers of lots in this area will see the proximity of the industrial lands and may not purchase a lot until that land is developed so that they can determine the impact.
- b) 91 Street flanks the site on the east. However, it can only be accessed from the south. Once the site is developed, the only access to the site will be through adjacent land to the north.

- c) Mr. Semeniuk, an Engineer who has been involved with this project, confirmed that the only access to this land is through lands to the north which is an impediment. Storm water management is also a strong impediment. The developer had to pay \$103,000 to the Provincial Government because of the wet lands located in the northwest corner of the site.
- d) The proposed 20 metre buffer between the subject site and the industrial site to the west is not sufficient.
- e) Information regarding the immediately adjacent land to the north was not provided until recently. He did not know how the assessed value of \$215,000/acre was determined. It is a bit of an affront that the City would use an appraisal on that site to determine the value of this site.

[53] In conclusion, Mr. Dibben clarified that the buffer land is included in the 10 percent municipal reserve calculation.

### **Decision**

[54] The appeal is **DENIED** and the decision of the Subdivision Authority is **CONFIRMED**. The subdivision is **GRANTED** as approved by the Subdivision Authority, subject to **CONDITIONS**.

### **Reasons for Decision**

[55] The subdivision was approved subject to a number of conditions. The Applicant has appealed Condition I(1) “that the owner provide money in place of Municipal Reserve (MR), in the amount of \$840,294.00 representing 1.62 hectares pursuant to Section 666 and Section 667 of the *Municipal Government Act*”.

[56] Section 666(1) of the *Municipal Government Act* states:

Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

- (a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,
- (b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or
- (c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the municipal development plan, which may not exceed 10% of the parcel of land

less the land required to be provided as environmental reserve and the land made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less the land required to be provided as environmental reserve and the land subject to an environmental reserve easement.

(4) When a combination of land and money is required to be provided, the sum of

- (a) the percentage of land required under subsection (2), and
- (b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

[57] Section 667(1) of the *Municipal Government Act* states that:

If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the applicant must provide

- (a) a market value appraisal of the existing parcel of land as of a specified date occurring within the 35-day period following the date on which the application for subdivision approval is made
  - (i) as if the use proposed for the land that is the subject of the proposed subdivision conforms with any use prescribed in a statutory plan or land use bylaw for that land, and
  - (ii) on the basis of what might be expected to be realized if the land were in an unsubdivided state and sold in the open market by a willing seller to a willing buyer on the date on which the appraisal is made,

or

- (b) if the applicant and the subdivision authority agree, a land value based on a method other than that described in clause (a).
- (2) If money is required to be provided in place of municipal reserve, school reserve or municipal and school reserve, the

subdivision authority must specify the amount of money required to be provided at the same time that subdivision approval is given.

- [58] The Applicant complied with the requirements of Section 667(1) in June, 2017. However, upon review, the City's lead in-house professional appraiser determined that the market value identified in the appraisal was substantially below market values for similar parcels of land. Subsequently, independent due diligence was done into the comparison sales used in the Applicant's appraisal and the Applicant was advised that the City would accept a valuation of \$210,000/acre because it was more consistent with an accurate market value for the subject lands. This resulted in the imposition of Condition I(1) on the subdivision approval that the owner provide money in place of Municipal Reserve (MR), in the amount of \$840,294.00 representing 1.62 hectares pursuant to Section 666 and Section 667 of the *Municipal Government Act*. This condition was appealed by the Applicant.
- [59] In order to determine the appropriateness of the City's assessment of market value, the City commissioned an independent appraisal of the subject lands. This appraisal suggests a market value of \$230,000/acre.
- [60] Section 667 of the *Municipal Government Act* is silent on the exact process if the appraisal does not reflect market value, both on the part of the municipality and on the part of the Board. If the municipality does not accept that the appraisal represents "market value" and the developer does not agree with another "method" of valuation, then the appeal process through the Board is the only method of reconciling the dispute.
- [61] Section 680(2) of the *Municipal Government Act* states that:
- In determining an appeal, the board hearing the appeal
- (a) must act in accordance with any applicable ALSA regional plan;
  - (a.1) must have regard to any statutory plan;
  - (b) must conform with the uses of land referred to in a land use bylaw;
  - (c) must be consistent with the land use policies;
  - (d) must have regard to but is not bound by the subdivision and development regulations;
  - (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or

make or substitute an approval, decision or condition of its own;

- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

[62] The Board reviewed all three of the appraisals prepared for the subject land. The Board has the discretion to (a) accept the appraisal prepared by the Appellant and reduce the valuation of the subject land to \$180,000/acre; (b) accept the City's appraisal and retain the City's condition intact, premised on \$210,000/acre; or (c) vary the condition to reflect the appraised market value of \$230,000/acre.

[63] The Board has considered all of the evidence provided and concludes that the in-house appraisal prepared by the City of Edmonton that values the land at \$210,000/acre is most acceptable for the following reasons:

- a) The valuation of this site at \$210,000/acre is more in line with the value of the immediately adjacent land to the north that was appraised at \$215,000/acre.
- b) In reviewing the other appraisals for the subject property, the Board heard a great deal of evidence about the valuation of comparable properties. The Board found in both instances that some comparable properties were less relevant than their authors believed and that assumptions from their authors led them to the divergent appraisals valuations.
- c) The Applicant's appraisal placed an over emphasis on the sale of the subject site.
- d) The subject site could be accessed from 91 Street on the appraisal valuation date in 2015.
- e) Development of this land was imminent at the time of the appraisal in 2015, even though the developer/owner has delayed development until this year.
- f) Although the land located west of the subject site is zoned industrial, development in this zone is considered light industrial, specifically office buildings and warehouse distribution centres, which will not negatively impact the value or use of this land. In addition, the subject site will be separated from the site zoned light industrial by a dry pond, park land and, at the narrowest stretch, by a 20-metre wide wooded or landscaped buffer.

[64] Based on all of the above, the Board accepts the appraisal prepared by the City in-house Appraiser and upholds the City's condition intact, premises on \$210,000/acre. The owner is therefore required to provide money in place of Municipal Reserve (MR), in the amount of \$840,294.00 representing 1.62 hectares pursuant to Section 666 and Section 667 of the *Municipal Government Act*.



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

Board Members in Attendance: Mr. A. Nagy; Mr. L. Pratt; Ms. E. Solez; Ms. S. LaPerle

**Important Information for the Applicant/Appellant**

1. 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.
  
2. 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.

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