

Date: November 12, 2015
Project Number: 178454710-001
File Number: SDAB-D-15-249

Notice of Decision

This appeal dated October 6, 2015, from the decision of the Development Authority for permission to:

Change the Use from Professional, Financial, and Office Support Services to Commercial School with accessory Health Services (SAFE Youth & Family Centre - 36 seats) [unedited from Permit decision]

on Condo Common Area (Plan 1321990), located at 4103C - 97 Street NW and Plan 1321990 Unit 6, located at 202, 4103 - 97 Street NW, was heard by the Subdivision and Development Appeal Board on October 28, 2015.

Summary of Hearing:

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.

The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, RSA 2000, c M-26.

The subject Site is zoned IB Industrial Business Zone. The development was approved, subject to conditions, and subsequently appealed by an adjacent property owner.

Prior to the hearing, the following information was provided to the Board, copies of which are on file:

- A written submission received from Sustainable Development, dated October 23, 2015.

At the outset of the appeal hearing, the Presiding Officer indicated that the Board understood that the Development Officer was unable to stay for the whole hearing. Although it is not normal practice, the Board would first hear from the Development Officer in order for him to answer questions from the Board, and to ensure that all attending parties have the opportunity to hear from the Development Authority. There were no objections to this process, and the hearing proceeded.

The Board heard from Mr. Lee, representing Sustainable Development, who made the following points:

1. He reviewed the submission that he provided to the Board.
2. The proposed development did not require variances, therefore, his technical review was limited to the parking impact.
3. He referred to Section 54 of the *Edmonton Zoning Bylaw* when making his decision and found that the proposed development would have a reduced parking impact for the change of Use.

In response to questions from the Board, Mr. Lee provided the following information:

1. He classified the proposed Use as a Commercial School and not a private school.
2. Based on his understanding, private schools are provincially accredited Kindergarten to Grade 12 schools that are privately funded.
3. Commercial Schools refer to other education services such as Kumon tutoring.
4. With regard to what he considered when approving the proposed development, he stated that he reviewed the parking impact and whether there were any plans relating to the area.
5. In this instance, he did not have any planning reasons to refuse the proposed development.
6. There was an outline plan related to this area, but it is not a statutory plan and governs rezoning applications rather than situations such as the one before this Board where there is a change in Use for an existing building.
7. He confirmed with the Respondent that the building will not be used as a Religious Assembly.
8. He could not confirm if the proposed development would have any signage; however, that would require a separate application.

The Board heard from Mr. Nikel, representing the Appellant, CONTAVA Inc., who was accompanied by Mr. Lucht, representing Complete Communications, who together made the following points:

1. They are representing the 97 Street Condominium Association and existing business owners in the building.
2. Currently, there are three business owners on the subject Site who were not aware that a school was a potential Use in the building.
3. They are concerned that the development will cause excess traffic in the area.
4. The building has a single entrance door with a narrow staircase.
5. All the businesses in the building have normal business hours.
6. The proposed Use will operate after hours and on weekends. The hours associated with the proposed development may conflict with the building maintenance schedule.

7. The proposed 36 seats in the development will create additional traffic and parking in the area.
8. The Respondent does not own the space in the building and is a tenant in the building.
9. They questioned if the development is a permanent change in the building or if it would be restricted.
10. Snow removal will take place after 5:00 p.m. when the businesses are closed.
11. Mr. Nikel owns approximately 50 percent of the building space.
12. There are no Condominium Board restrictions with the Use of the space in the building.
13. CONTAVA Inc. has approximately 40 employees, operates from Monday to Friday, 8:00 a.m. to 5:00 p.m. and occasionally from 7:00 a.m. to 6:00 p.m.
14. Mr. Lucht's company, Complete Communications, occupies approximately 30 percent of the office space.
15. The other business owner in the building is Twist Marketing.
16. The proposed application does not contravene the condominium's Bylaws.
17. Managing such a different business in the building will be an inconvenience.
18. The proposed development is not compatible with the existing Uses in the building.
19. They do not have an issue with the existing businesses operating after hours to 10:00 p.m. or 11:00 p.m.
20. Since they filed the appeal, they have spoken with the Appellant and they understand the nature of the proposed development.

The Board then heard from Mr. Mohamed, representing the Respondent, Safe Youth & Family Centre, who made the following points:

1. He spoke to the Appellant on two occasions and explained the proposed development to them.
2. The proposed Use is for a non-profit organization that helps troubled youth.
3. The proposed development provides an after school program that includes tutoring and counselling on weekends and after business hours.

In response to questions by the Board, Mr. Mohamed provided the following information:

1. He confirmed that he has a five year lease.
2. The clientele is made up of two categories of youth:
 - a. Older youth aged 18 to 19 years old who will be provided counselling services on an intermittent basis; and
 - b. Young children around Grades 6 to 8 or ages 8 to 10, or up to 15 to 16, who will be using the facility more regularly after hours to do one or two hours of homework.
3. The older children may attend counselling during the day.
4. They expect that some of the older children will drive to the subject Site, and younger children will be dropped off by their parents.
5. There will be one to two individuals in the office during the day.

6. When asked why he had applied for 36 seats, the Respondent stated that the number represented the maximum seats that would be required in the rare instances (approximately once or twice a year) when Board meetings with trustees and members will be in attendance.
7. Tutoring or counselling sessions could be for a single person, up to groups of 10 to 12 youths at a time.
8. The organization is targeted toward youth from the East African cultural community.
9. In particular, the organization aims to address youth deviance in the Somali community within Edmonton; however, the organization's services are available to all individuals.
10. The majority of the youth may be Muslim; however, youth will not be asked about their religious affiliation as a prerequisite to take part in the program. Religious tutoring will not be a component to the services provided.
11. The number of employees may increase if the need for the services increase.

Mr. Nikel and Mr. Lucht did not have anything to add in rebuttal.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority, subject to the following CONDITIONS:

1. No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback.
2. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind.
3. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices.

Reasons for Decision:

The Board finds the following:

1. The proposed development is a Discretionary Use in the IB Industrial Business Zone.

2. Although the Appellant was concerned with regard to parking impacts, particularly after hours, the Development Authority reviewed the parking and found that there will be a decrease in the number of required parking spaces.
3. Based on the evidence submitted, the Commercial School will be used primarily later in the afternoon for tutoring and after-school homework, and on weekends when the majority of businesses in the building are not using the facility.
4. Based on the evidence submitted, the difference in the hours of operation will reduce any potential planning impacts.
5. A Commercial School with accessory Health Services is an appropriate Use for this site.
6. The proposed development meets the regulations of the *Edmonton Zoning Bylaw* and no variances are required.
7. No planning reasons were provided to the Board to justify refusal of the proposed development. Condominium bylaws are a separate matter upon which the Board takes no position.
8. Based on the above, it is the opinion of the Board that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
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*, RSA 2000, c S-1;
 - c) the requirements of the *Permit Regulation*, Alta Reg 204/2007;
 - d) the requirements of any other appropriate federal, provincial or municipal legislation; and
 - 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 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 5th Floor, 10250 – 101 Street, Edmonton.

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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

CC:

Date: November 12, 2015
Project Number: 073174988-005
File Number: SDAB-D-15-250

Notice of Decision

This appeal dated October 5, 2015, from the decision of the Development Authority for permission to:

Change the digital panels of a Freestanding Minor Digital On-Premises Off-Premises Sign from [3.1 m x 3.1 m] to [6.1 m x 3.1 m] - increase to the sign and copy areas (PARSONS CENTRE)

on Condo Common Area (Plan 1024895,0920843,0920863), located at 2951 - Ellwood Drive SW and Plan 0920863 Unit 19, located at 2907 - Ellwood Drive SW, was heard by the Subdivision and Development Appeal Board on October 28, 2015.

Preliminary Matter:

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.

The Presiding Officer first addressed the issue of jurisdiction and whether the appeal was filed within the allowable 14-day appeal period, pursuant to section 686 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").

The Board heard from Mr. Chopko and Mr. Balaban, representing the Appellant, Impact Property Advisors, who provided the following information with regard to the timing of filing the appeal:

1. They believe that they received the refused decision on October 1, 2015.
2. Between July 24, 2015 and October 1, 2015, Mr. Balaban spoke with the Development Authority but could not confirm if they were told what the decision would be.
3. Daniel Hindmarsh signed for the registered mail at their office on October 1, 2015.
4. They could not confirm who received the mail on July 29, 2015 as Mr. Balaban was out of town at that time. Several employees were also away at that time.
5. Prior to July 24, 2015, they had discussions with the Development Authority with respect to submitting a revised roadway plan.
6. Mr. Chopko did not have any conversations with the Development Authority until today.

The Board then heard from Ms. Noorman and Mr. Ahuja, representing the City of Edmonton's Sustainable Development Department, who provided the following information with regard to the timing of filing the appeal:

1. The permit was refused on July 24, 2015.
2. The refused permit was sent to the address provided on the development permit application.
3. The mail was returned to Sustainable Development in late September 2015.
4. Ms. Noorman indicated that she contacted Mr. Balaban to obtain a valid mailing address.
5. The envelope of the first mailing had the address crossed out and it was returned to Sustainable Development.
6. They believe the envelope was returned to Sustainable Development on September 30, 2015, the day before the second notice was sent out on October 1, 2015.
7. There were no conversations with the Appellant between the July 24, 2015 decision and when the appeal was filed.
8. The Development Authority did inform the Appellant that the development permit would be refused prior to the decision dated July 24, 2015.
9. Mr. Ahuja indicated that there were ongoing conversations with the Appellant because there were several proposed changes to the proposed Sign.

In rebuttal, Mr. Chopko and Mr. Balaban made the following points:

1. The proposed Sign is for a condominium unit that consists of a Sign and the address used in the first mailing is for the condominium Site as a whole.
2. There is no building address available for the proposed Sign.

MOTION:

That the Board assumes jurisdiction pursuant to Section 686(1)(a)(i) of the MGA.

REASONS FOR DECISION:

The Board finds the following:

1. The Development Authority met with the Appellants prior to making the decision on July 24, 2015 and informed them that the proposed development would be refused.
2. Based on the evidence submitted, the meeting itself does not constitute notice of the refused permit as contemplated under Section 686(1)(a)(i) of the MGA.

3. A review of the permit refusal shows that there were two addresses on file: one of which is for the condo common area where the sign is located, and where there would be no one available to receive mail. The Board therefore finds that the refused permit was sent to the wrong address.
4. There is no evidence of any other form of communication between Sustainable Development and the Appellant between July 24, 2015 and the end of September 2015.
5. When the original notification was returned to Sustainable Development at the end of September 2015, the Development Authority contacted the Appellant to get a proper address and re-sent the refused permit, which was received by the Appellant and signed for on October 1, 2015
6. The Board notes that upon receipt of the refused permit, the Appellant promptly filed the Notice of Appeal on October 5, 2015.
7. Based on the evidence provided, the Board determined the Appellant was notified of the refusal of the development permit on October 1, 2015. Therefore, pursuant to Section 686(1)(a)(i) of the *MGA*, the appeal that was filed on October 5, 2015 fell within the legislated 14 days deadline.

Summary of the Hearing:

The subject Site is zoned EIB Ellerslie Industrial Business Zone. The development permit was refused because of an excess in the maximum allowable Height, and a deficiency in the proposed Sign Area.

Prior to the hearing the following information was provided to the Board, copies of which are on file:

- Canada Post Delivery Confirmation receipts showing deliveries on July 29, 2015 and October 1, 2015;
- Development Permit Application and Development Permit;
- Written submission received from Sustainable Development on October 13, 2015;
- Email containing reasons for the Appeal received on October 21, 2015;
- Email notice from the SDAB regarding the time of the hearing;
- Email from the SDAB to the Development Officer regarding the Appeal;
- Email from Transportation Services regarding road widening;
- Email from Transportation Services; and
- A submission from the Appellants on October 28, 2015, prior to the start of the hearing.

The Board heard from Mr. Chopko and Mr. Balaban, representing Impact Property Advisors, who made the following points:

1. They reviewed the package previously submitted to the Board.

2. They are part owners of the development. They purchased Unit 10, which is 5 foot wide and 20 foot deep in the common property area where the existing Sign was previously approved.
3. Initially, they purchased the Sign for the entrance to Parsons Centre to advertise their on-premise businesses.
4. They wanted to alter a portion of the Sign face by retrofitting a 10 foot by 20 foot digital component while retaining some existing static panels.
5. They want to expand the advertising on the Sign by applying for an On-premises Off-Premises Sign.
6. The 10 foot by 10 foot panel is inappropriate, given the industry standard which is considerably larger.
7. The proposed development will be located no closer to Parsons Road than the existing Sign because it will fit within the 20 foot length of Unit 10. The existing supporting structure will not change.
8. They referred to photographs in their submission showing: 1) the location of the proposed retrofit; 2) another sign located to the east which is also close to the roadway; and 3) a Sign at the intersection of Ellerslie Road and Parsons Road.
9. They are not proposing to change the Height of the existing structure. With respect to the proposed portion of the retrofit, the Height to the top of the digital portion of the Sign face will be 0.62 metres above 8 metres.
10. The Setback will remain the same, and the Sign face will be contained within Unit 10 and will not encroach on the parking lot area.
11. This property was originally designated for a Digital Sign and the proposed Sign will fit in the 5 foot by 20 foot dimensions of Unit 10, making this a viable development.
12. Unit 10 was a marked lot on the original Condominium Plan, and they purchased it based on these representations.
13. They provided the Board with a photograph of a mock-up of the proposed Digital Sign superimposed on the existing Sign, marked Exhibit A.
14. They provided the Board with a photograph of a mock-up of the Sign from the other direction, and a photograph of the existing Digital Sign at the intersection of Ellerslie Road and Parsons Road, marked Exhibit B.
15. In their opinion, the signs in Exhibit A and B are similar.

In response to questions from the Board, Mr. Chopko and Mr. Balaban provided the following information:

1. Exhibit A shows the proposed development looking south and that the Sign extends the full 20 foot length of Unit 10.
2. The 2009 Condominium Plan specifies that there will be a Sign on Unit 10.

3. Given the dimensions of Unit 10, the proposed Sign will not encroach on any other lot. They confirmed that the aerial photographs show the location of the Sign and two similar Digital On-premises Off-premises Signs and how they are similar to the proposed development.
4. The Sign in Exhibit B is located half a block east and as close, if not closer, to the road and appears to be on common property. The proposed Sign will be on its separate Unit.
5. There is a 502 metres separation distance between the proposed Digital Sign and the Digital Sign at the corner of Ellerslie Road and Parsons Road and 175 metres separation distance from the Hughes Digital Sign that is located further north on Parsons Road, as shown in Exhibit B.
6. They believe the required separation distance is 100 metres and there is no digital 20 foot by 10 foot Sign in that radius. The closest Sign is the Hughes Car Wash Sign that is 175 metres away.
7. They clarified that the Sign is 0.62 metres overheight as they are measuring to the highest edge of the digital face of the Sign, which comes up to the bottom of the Parsons Centre banner.
8. The overall structure is not changing, so the Height will not change. The only difference is the addition of the two-sided Digital Sign face.
9. All of the electronics associated with the Sign will be underground.
10. The three lessees who currently advertise on the static panels have the right to continue for the duration of their lease. However, it is the Appellants' preference that these three lessees move their Signs into the rotation of the Digital Sign face.
11. The proposed application is to add a two-sided component to the Sign and the banner. The five lower panels will remain the same.
12. The reasons for refusal are the Height and the Setback, which are not changing from the previous application.
13. The only change is the digital portion, which will be larger and protrude from the existing base by four to five feet. However, it will remain within the boundaries of the Unit 10.
14. They were not certain if a variance was granted for the original Sign as they did not own the property at that time, and the Sign was part of the original development permit.
15. Upon reviewing plans submitted with the development permit application, they acknowledged that the extension they are proposing is larger than what is proposed in their submission provided to the Board.
16. They clarified that the digital portion of the Sign will be moved inward to cover a portion of the Sign's supporting structure so that the Sign face will not extend beyond the 20 foot width of the Unit.
17. The digital portion of the Sign will be 6.096 metres by 3.048 metres, and the existing post will not change.
18. The digital faces will be back to back and may be angled out at the main support, but this has not been determined.

19. The only difference between the existing Sign and the proposed Sign is the area of the digital face, as the entire proposed Sign will be within the 5 foot by 20 foot dimensions of Unit 10.
20. The proposed Sign is no different than the existing Sign.
21. The proposed Sign must be within the 5 foot by 20 foot footprint as shown on Page 5 of their submission.
22. The green portion on the Site Plan, submitted as Exhibit C, shows the proposed development.
23. They provided the Board with the original 2009 Condominium Plan showing Unit 10, marked Exhibit D.
24. The road widening plan is not settled and is in the preliminary stages. As yet there is no timeline for it. If approved, it would remove the possibility of a sign on Unit 10.
25. The condominium plan is an accurate representation of the road as it presently exists.
26. They provided the Board with the original Sign Plan approved in 2009, marked Exhibit E.
27. They provided the Board with the stamped approved plan on April 2, 2014 for the 10 foot by 10 foot digital two-sided Sign, marked Exhibit F.
28. No Digital Sign has been built since the 2014 approval.
29. They provided the Board with the approved Sign permit dated July 25, 2014, which includes a variance to the Sign Area allowing 9.61 square metres and is Setback 0.76 metres, marked Exhibit G. There was no concern regarding the Height or a variance to the Height in the approved permit.
30. The Height on the approved Sign in Exhibit F is 32 foot, 10 inches.

The Board then heard from Ms. Noorman and Mr. Ahuja, representing the City of Edmonton's Sustainable Development, who made the following points:

1. They referenced the Exhibits provided in the Appellants' submission.
2. The mock-up of the Sign shown in Exhibit A was not provided to Sustainable Development and was not part of the information submitted with the development permit application.
3. Based on the measurement information provided in the application, the Sign is Setback 0.76 metres from the property line. Because the parcel is 20 foot in size and the Sign is 20 foot in size, and taking into account the existing Setback, the Sign would encroach two and a half feet to three feet onto the neighbouring parcel.
4. In determining the Setback, they review the distance from the property line located closest to the public roadway.
5. They referred to Page 3 of their submission and discussed the history and sequencing of the various development permit applications for the subject Sign.
6. The original development permit application was for a Freestanding On-premises Sign which can be located within the Setback, which was approved.

7. The next development permit was to convert a portion of the Sign to a Digital Sign and to remove the top three static panels and replace them with a digital panel, as digital Signs of less than 8 square metres are allowed in the Setback.
8. The Development Authority exercised discretion in granting a variance of 1.0 square metres to allow the initial digital application.
9. The third development permit application was to change the content on the digital panel from only an On-premises Sign to an On-Premises/Off-premises Sign, which would not entail any change to the physical dimensions of the Sign itself.
10. The current development permit application is different, as it will have a larger digital area. The application was therefore reviewed using the Digital Sign development requirements in the *Edmonton Zoning Bylaw*.
11. They requested Survey Plans showing specific dimensions for the Sign and its location from the Appellant, but did not receive them.
12. They referenced Exhibit C, showing the Sign as being situated 2 feet, 6 inches from the property line.
13. They used Pictometry to make calculations showing the Sign to be 2 feet, 3 inches from the property line.
14. Based on the diagram submitted with the development permit application, the proposed Sign will be 20 foot wide with a support structure of 4 foot in width, and a two and a half foot Setback from the property line. They determined that this would exceed the dimensions of the subject property.
15. The *Edmonton Zoning Bylaw* states that any Sign greater than 8.0 square metres cannot be located in the required 6.0 metres Setback from the property line.
16. With regard to road widening, they stated that if road widening is not scheduled to happen in the next five years, Transportation Services would not necessarily object to the proposed Sign.

In response to questions from the Board, Ms. Noorman provided the following information:

1. In the Development Authority's opinion, there is a plan for road widening in the future; however, they could not confirm this.
2. They agreed that the road widening will be on the west side of Unit 10.
3. In their opinion, the discretionary powers of the Development Officer have been used over time in relation to the various development permit applications for this Sign. However, there is a substantive change for the latest proposed Sign, and the Development Authority should not grant any further Setback variances due to the major impact of the proposed change.
4. With regard to the measurement in the Setback, the Development Authority agreed that the proposed added protrusion of the digital portion of the Sign will not change the Setback deficiency, but will make the Sign intrude on the condominium common property.

5. The proposed Sign size of 18.6 square metres per side is double the previous Sign Area, and is too large to consider a variance. The entire Sign structure should be located 6.0 metres away from the property line.
6. When asked how they determined that the increase in the proposed Sign Area amounts to 35 square metres, as stated on Page 2 of their submission, they stated that the calculation was based on all of the advertisement content area for one side of the Sign, including the digital and static components, as well as the Parsons Centre banner.
7. They chose Schedule 59F of the *Edmonton Zoning Bylaw* instead of Schedule 59J as there were no regulations in Schedule 59J for Minor Digital On-premises Off-premises Signs. In so doing, they used regulations of the underlying zone which shares a similar purpose with the Ellerslie Industrial Business Zone
8. The proposed Sign is a Discretionary Use and they used their discretion to apply Schedule 59F.
9. They acknowledged that there is no provision in the *Edmonton Zoning Bylaw* that allow substitutions of Schedule F.
10. Without a Schedule, they would be forced to refuse the proposed development as there are no regulations to Height or Sign Area.
11. They are not certain why Minor Digital On-premises Off-premises Signs are specified as a Discretionary Use in the Ellerslie Industrial Zone, but not addressed in Schedule 59J.
12. In their opinion, Schedule 59F was the most suitable Schedule to apply for the proposed development.
13. They were asked about the methods used to measure the Setback. They stated they could not treat Unit 10 as a separate lot as it is a Condominium Unit and they need to look at the whole property in determining the Setback.
14. They confirmed that Transportation looked at the cone of vision when reviewing the Sign and were not opposed to the proposed Sign.
15. There is nothing in the *Edmonton Zoning Bylaw* that prohibits Minor Digital On-premises Signs being located in the Setback. They could not point to any specific prohibition; however, because the Sign is a Discretionary Use, they could exercise their discretion and require it to be located outside of the Setback.
16. If there are planning reasons for restricting Signs in the Setback from other Signs in the area, the key determinant is due to the Setback on adjacent roadways.
17. They made reference to a requirement for separation distance based on Sign Area.
18. The original approved Digital Sign was approved based on 9.0 square metres Sign Area and a smaller separation distance was required and not an issue at that time.
19. They confirmed that the separation requirements are the same for Digital Signs greater than 8.0 square metres in Schedule 59E through Schedule 59J of the *Edmonton Zoning Bylaw*.

In rebuttal, Mr. Chopko and Mr. Balaban made the following points:

1. They provided the Board with Exhibit H, a closer view of the sign in exhibit B and indicated that it was approximately 8 feet from the public roadway.
2. The subdivision was approved in 2009 and they had no control over the location of Unit 10.
3. The proposed Sign must be located in the 5 foot by 20 foot Unit and can only be built in this location.
4. The proposed Sign is similar to other Signs in the area that were approved.
5. Transportation Services is not opposed to the proposed Sign.
6. In their opinion, only a Sign will be able to fit in Unit 10.

Decision:

The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision:

The Board finds the following:

1. The proposed development, a Digital On-premises Off-premises Sign, is a Discretionary Use in the EIB Ellerslie Industrial Business Zone.
2. The proposed development is to be located on Unit 10 of the Parsons Centre Condominium Development.
3. Based on the evidence submitted, there is an existing Sign located on the subject Site. However, it was erected as a static On-premises Sign, and the Development Authority used Discretion when it was originally proposed in 2009 to vary the Height up to 10 metres.
4. Based on the evidence submitted, the proposed Sign exceeds the maximum Height of 8.0 metres prescribed for Minor On-premises Off-premises Digital Signs in every Schedule of Section 59 of the *Edmonton Zoning Bylaw*, which speaks to the Height of Signs.
5. These guidelines also indicate that because of the size of the proposed digital Sign it will not comply with requirements for Separation Distance between digital Signs.
6. The Board finds that the information presented at the hearing is different than what was submitted to Sustainable Development, particularly with respect to the proposed Digital Sign face.

7. The Board accepts the submissions of the Development Officers that the proposed development with a doubling of the digital portion of the Sign Area and a retention of the static Sign Area represents a significant change from the Sign as approved most recently in 2014.
8. The proposed development is as large as Unit 10, which is a fundamental factor in the Board's consideration, given the ambiguity of the Appellant's evidence regarding potential protrusions of the Digital Sign outside of the subject Site, Unit 10.
9. The Appellant did not provide a Real Property Report, a survey nor proper drawings with the development permit application or at the hearing.
10. The Board accepts the submission from Sustainable Development that Transportation Services does not have an issue specifically with the cone of vision.
11. The Board accepts the evidence provided by Sustainable Development that the location of the proposed sign is within the Setback required for Digital Signs over 8 square metres
12. Based on the evidence presented, and noting the missing information set out above, the Board is not satisfied that the proposed retrofit to the existing Sign is suitable as a Freestanding Minor Digital On-Premises Off-Premises Sign, given the dimensions and location of the subject Site, Unit 10.
13. The proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
14. For the above reasons, the appeal is denied.

Important Information for Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. 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.
3. 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 5th Floor, 10250 – 101 Street, Edmonton.

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.

Ms. P. Jones, Presiding Officer
Subdivision and Development Appeal Board

CC: