



**EDMONTON  
TRIBUNALS**

*Subdivision &  
Development  
Appeal Board*

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Date: October 27, 2017  
Project Number: 246876876-001  
File Number: SDAB-D-17-185

**Notice of Decision**

- [1] On October 12, 2017, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on **September 19, 2017**. The appeal concerned the decision of the Development Authority, issued on September 7, 2017, to refuse the following development:

**Install (1) Freestanding Minor Digital On-premises Off-premises Sign (2 digital panels 6.1 metres by 3.0 metres facing North/South) (PATTISON-PARSONS CENTRE) and remove (1) existing Freestanding Minor Digital On-premises Off-premises Sign DP: 073174988-004.**

- [2] The subject property is on Plan 1024895 Unit 33, located at 2951 - Ellwood Drive SW, within the EIB Ellerslie Industrial Business Zone. The Special Area Ellerslie Industrial 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;
  - Written submissions by Legal Counsel for the Appellant;
  - Letter in opposition from the Condominium Corporation No. 102 5118; and
  - Online responses.

**Preliminary Matters**

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

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

- [7] Mr. Murphy referred the Board to TAB 1 of his written submission, the Development Officer's Reasons for Refusal.
- [8] First, the Sign is not setback sufficiently from the property line. However, the property is designed to accommodate a 10 foot by 20 foot Sign.
- [9] Second, the proposed Sign encroaches on the radial separation distance. In the Development Officer's opinion, there should be a 200 metre separation distance and there is only a 175 metre separation distance between Signs.
- [10] The subject site is within the EIB Ellerslie Industrial Business Zone (TAB 2) which is not in close proximity to any residential neighbourhood. Under Section 930.4(3)(33), a Minor Digital On-premises Off-premises Sign is a Discretionary Use in this zone.
- [11] The proposed smaller Sign will replace an existing Sign. A Sign has been at this location for several years.
- [12] Section 930.4(4)(12) states that Signs shall comply with the regulations found in Schedule 59J. Schedule J does not list any regulations applicable to Minor Digital On-premises Off-premises Signs. The Development Authority did not have the authority to refer to Schedule 59F because there were no rules set out in Schedule 59J.
- [13] Schedule 59J.2(3)(c) (TAB 3) states that Freestanding On-premises Signs shall have a 45.0 metres radial separation distance from any other Freestanding On-premises Sign or 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. This excludes Digital Signs that are located on the same Freestanding Sign structure as the proposed Freestanding On-premises Sign. Schedule 59F.2(3)(c) (TAB 4) has a similar section. These sections are authority that it is possible to have two separate Signs on one common post. One can be a Digital Sign and one can be an On-premises Sign, but not necessarily Digital.
- [14] Under Section 6.2(5), a Digital Sign means any Sign that is remotely changed on or off Site and incorporates a technology or method allowing the Sign to change copy without having to physically or mechanically replace the Sign face or its components (TAB 5).
- [15] A submitted photograph (TAB 6) shows the "Husky Sign." This is the Sign that in the Development Officer's opinion is located too close to the subject Sign.
- [16] The Husky Sign has two components. Both parts of the Sign are on the same structure, but they retain separate identities.

- [17] The top portion is a fixed On-premises Sign. The lower Digital portion is 10 feet by 20 feet and less than 20 square metres in size so the separation distance required if Schedule 59F applies should only be 100 metres and not 200 metres. This Sign is setback on the property closer to the entrance of the car wash.
- [18] An aerial photograph shows 175 metres separation distance between two existing Signs (TAB 7).
- [19] TAB A and TAB B of his second submission show the application materials for the Husky Sign and subsequent Board decision.
- [20] TAB C of his second submission shows a diagram of the Sign that exists on the subject site. He calculated the height of the Sign to be 29 feet but the Development Authority calculated the height to be even greater, 32.8 feet. The proposed Sign will have less advertising space than what exists today. The total Sign area was approximately 435 square feet.
- [21] An aerial photograph of the subject Site (TAB 8) shows that the proposed Sign will be located on the west side of the property. The green space west of the subject Site is outside the property line. The existing Sign is built to the property line with a large green space between the Sign and the road. He also supplied a street view of the existing Sign that is to be replaced (TAB 9).
- [22] The Plan showing the survey of the bare land Condominium of Parsons Centre (TAB 10) is different than most commercial sites because each unit has its own title. The Plan also includes Unit 10, a site meant for a 10 feet by 20 feet Sign on the ground.
- [23] The original version of the Plan that the Subdivision Authority provided to him for the Condominium (TAB 11) shows that there was always going to be a Sign at this location, but not as high as the Sign that was built. That lot can accommodate a Sign up to 22 feet wide.
- [24] The Subdivision Authority is not allowed to approve a subdivision unless the land is suitable for that purpose.
- [25] Another panel of this Board previously reviewed a Sign at this location (TAB 15). According to the decision there was confusion about the location of the Sign relative to the property line for Unit 10 and whether the Sign proposed in that application would encroach onto the common area parking lot. The newly submitted Site Plan shows the Sign as it exists today (TAB 12). Unit 10 extends to the east over what is currently part of the parking lot. That Board made an assumption that the parking lot was part of the common property but it is not – it is the parking lot that now encroaches onto Unit 10.
- [26] The Sign will be installed with the surveyor to ensure there is no encroachment. The Sign will extend over the parking lot to the east but will be within Unit 10 boundaries.

- [27] The Development Authority's report included diagrams of four Signs and outlined the history of two previously approved Signs located on Unit 10.
- [28] The Development Authority indicated in her report that there is a setback issue and a variance was granted for the previous Signs. The proposed Sign will be smaller and will be placed at the west property line, the same distance from the road as the previously approved Signs. It requires the very same variance to setback but it was refused.
- [29] In sum, the setback issue has existed on the site since the first Sign was in place. The total Sign area is less than what was previously built which makes the Sign less obtrusive.
- [30] The letter received from the Parsons Condominium Corporation 092 0843 states that they are in support of the proposed Sign (TAB 14). There is a deal between the operators of the Sign and the condominium owners that the Sign will not advertise business competitors of the on-site businesses.
- [31] Mr. Murphy questioned whether the setback provisions of the *Edmonton Zoning Bylaw* were meant to apply to Signs. Under Schedule 59F.3(6)(j), Signs with an area greater than 8.0 square metres shall not be located within any setback (TAB 4). Under principles of statutory interpretation, Schedule 59F.3(6)(j) must have meaning and should not be redundant. This supports the proposition that if the Sign is 8 square metres or less in area, a development can take place in the setback.
- [32] In the alternative, Mr. Murphy argued that if the Board determines a variance is required, the proposed Sign should still be approved with the variance previously granted as the proposal does not involve a change to the Sign area, the new Sign will be 2.0 metres lower, it will have a smaller total Sign area, and the extra width will overhang the interior of the parking lot away from the road. The proposed Sign will not impact vehicles travelling in the area as the Sign already exists and there have been no complaints about the previous Signs.
- [33] The west utility Right of Way runs through the entire property but is primarily on the subject site. The distance between the west boundary along Unit 10 and the edge of the road is 20 metres.
- [34] Transportation would not support the Sign if there was a possibility that the road would be widened in the near future. The Sign will need to be removed if this takes place in the future.
- [35] In response to questions by the Board, he stated
- i) The proposed Sign area is less than what has existed previously. The total Sign area as outlined in TAB C of his second submission shows that the copy space is 210 square feet to the top of the Parsons Centre logo.

- ii) He was not opposed to conditions suggested by the Development Officer in her written report with one exception. He opposed the condition that the proposed Digital Sign shall feature a holding time of 8 seconds or greater (TAB 13 and Development Officer's report). No bylaw provides a "holding time," but the *Edmonton Zoning Bylaw* does define Message Duration. Section 7.9(7) of the *Bylaw* states (in part) that a Minor Digital On-premises Off-premises Sign means any Sign that is remotely changed on or off site and has a "Message Duration" greater than or equal to 6 seconds.
- iii) Transportation did not indicate they were only supportive of the Sign if the suggested conditions were followed. In his opinion, the conditions were only suggestions. He is not opposed to the other conditions suggested by Transportation.
- iv) If the correct required minimum setback distance is 200 metres, a variance should be granted to allow the replacement Sign because two site conditions ameliorate the relaxation, the Husky sign is set further back from the road and intervening buildings obstruct the site lines for the two Signs.
- v) It is not clear whether the neighbours who object are simply opposed to variances in principle or whether they are aware that the proposed Sign will replace the existing one.

ii) *Position of the Development Authority, Ms. Noorman*

- [36] The Subdivision Authority letter (TAB 11 of the Appellant's submission) is dated November 14, 2008, three years prior to when Digital Signs regulations came into force. The attachment does not match the subdivision that was ultimately approved. The location and number of units changed. The early letter identifies the bare land condominium units as commercial and includes Unit 8 for a Sign, not Unit 10.
- [37] In her opinion, Unit 10 was not subdivided properly. Unit 10 may have been approved for a Sign, but that does not mean it was approved for this specific proposed Sign. Unit 10 was not appropriately subdivided for the proposed Use class as there is not the appropriate amount of Setback.
- [38] Ms. Noorman reviewed her submission on the history of various Sign applications at this site. Over time, both the Sign and the regulations changed.
- [39] The prior approved Signs involved changes in use class, but used the pre-existing, previously approved structure and the Digital Sign was much smaller. That was the reason she believes prior variances may have been granted. The proposed Sign is significantly different. Unlike the predecessors, this Sign involves a doubling of the Digital Sign area and a totally new structure and orientation. She treated it like a new application. A new application would not be approved as it would take away a static opportunity.

- [40] An On-premises Sign can be 10.0 metres in height and located up to the property line of Unit 10. The proposed Sign complies with maximum height and size requirements. However, Section 930.4(4)(3) in the EIB Ellerslie Industrial Business Zone requires a 6.0 metre setback for this type of Sign (a Digital Sign greater than 8.0 square metres in size).
- [41] There is an approved permit for a Sign in this location. The Appellant had a right to that Sign, but did not build it. Now the Appellant is choosing to replace the current Sign and she chose not to approve variances for this new proposed Sign. In Ms. Noorman's opinion, the existing Sign could be used rather than replaced with a new one. She used her discretion to refuse the Sign so variances would not continue.
- [42] In her opinion, all of the other Signs in this area require a setback and any hardship from the lot was created by the developer.
- [43] The Plot Plan in TAB 11 shows that the former Unit 8 and the approved Unit 10 are partially on the right of way.
- [44] There was a lack of regulations applicable to this type of Sign in Schedule 59J of the Bylaw. After consulting with the City's legal department, she applied Schedule 59F because it is the applicable schedule for the IB Industrial Business Zone which is the most comparable type of underlying zone. She does not believe the intent of the Bylaw was to have unrestricted Minor Digital On-premises Off-premises Signs in this zone.
- [45] Schedule 59J does not have any regulations for this type of Sign even though it is a listed use. In her opinion, the 6.0 metre setback is part of the regulations in the EIB Ellerslie Industrial Business Zone and is required.
- [46] The separation distance required under Schedule 59F.3(6)(e) was calculated correctly at 100 metres based on the entire copy area of the Husky Sign (Digital and non-digital) per City policy. The wording of Schedule 59F.3(6)(d)(ii) supports this interpretation.
- [47] She confirmed that the 8 second hold time is a condition from Transportation. She does not know why 8 seconds was chosen other than she believes it is based on the Transportation Canada Guidelines.

*iii) Rebuttal of the Appellant, Mr. Murphy*

- [48] Mr. Murphy reiterated that there is no justification to impose a holding time of 8 seconds. In his opinion, if there is a safety issue with the Sign, Transportation can tell them to stop using the Sign. He is agreeable to the remaining conditions suggested by Transportation.
- [49] With regard to Units 8 and 10, the point is that a Sign was intended to be located on those Units and a Sign was approved for Unit 10.

- [50] If a 6.0 metre setback was required, the Subdivision Authority should not have considered this to be viable location. The standard Sign sizes have not changed since the subdivision approval.
- [51] The underlying zone outlines that there shall be a 6.0 metre setback in the EIB Ellerslie Industrial Business Zone.
- [52] In his opinion, there is a hardship to locating a Sign on Unit 10, the subject site.
- [53] In his opinion, there is no difference in impact between a Digital On-premises Sign and a Digital On-premises Off-premises Sign. Here, a Digital On-premises Digital Sign was previously approved. The proposed Sign should be approved because it will be located in the same spot as the existing Sign, it will be lower than the existing Sign and it will have a reduced copy area.
- [54] There is no authority to apply Schedule 59F, it is not the right Sign Schedule to refer to.

### **Decision**

- [55] 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**:
- a. The permit is granted for a five year term and will expire on October 27, 2022.
  - b. The proposed Minor Digital On-premises Off-premises Sign shall be constructed in accordance with the stamped approved drawings.
  - c. Ambient light monitors shall automatically adjust the brightness level of the Copy Area based on ambient light conditions. Brightness levels shall not exceed 0.3 footcandles above ambient light conditions when measured from the Sign face at its maximum brightness, between sunset and sunrise, at those times determined by the Sunrise / Sunset calculator from the National Research Council of Canada; (Reference Section 59.2(5)(a))
  - d. 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))
  - e. Minor Digital On-premises Off-premises Signs shall be located so that all portions of the Sign and its support structure are completely located within the property and no part of the Sign may project beyond the property lines unless otherwise specified in a Sign Schedule. (Reference Section 59.2(12))

- f. The following conditions, in consultation with the Transportation department, shall apply to the proposed Minor Digital On-premises Off-premises Sign, in accordance to Section 59.2.11:
- i. That the proposed Minor Digital On-premises Off-premises Sign shall feature a Message Duration of 6 seconds or greater.
  - ii. That, should at any time, Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
  - iii. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the Sign.
  - iv. The proposed Sign shall be constructed entirely within private property. No portion of the Sign shall encroach over/into road right-of-way.

**ADVISEMENT:**

Should the Applicant wish to display video or any form of moving images on the Sign, a new Development Application for a Major Digital Sign will be required. At that time, Transportation Planning and Engineering will require a safety review of the Sign prior to responding to the application.

- [56] In granting the development the following variance to the *Edmonton Zoning Bylaw* is allowed:
- a. The minimum allowable Setback of 6.0 metres, pursuant to Section 930.4(4)(3), is varied to allow a deficiency of 5.87 metres, thereby decreasing the minimum allowed to 0.13 metres.

**Reasons for Decision**

- [57] The proposed development, a Minor Digital On-premises Off-premises Sign, is a Discretionary Use in the EIB Ellerslie Industrial Business Zone.
- [58] The Sign is to be located on Unit 10, a 1.77 metre by 6.12 metre rectangular unit located on a larger condominium development.

- [59] The development history of the Sign on Unit 10 summarized for the Board included the following information:
- a. A Freestanding On-premises Sign (10 metres in Height) with multiple panels for static copy was approved as a Discretionary Use and constructed on Unit 10.
  - b. Subsequent Development Permits were issued: first, to remove three static panels and install 2 minor Digital On-premises Signs; and then, to change that Freestanding Minor Digital On-premises Sign Use to a Minor Digital On-premises Off-premises Sign Use with a Digital Sign Area of approximately 9 square metres. Those approved changes were not constructed.
  - c. An application to change the Digital panels of the Freestanding Minor Digital On-premises Off-premises Sign from [3.1 metres by 3.1 metres] to [6.1 metres by 3.1 metres] was denied by the Development Authority and by another panel of this Board in 2015.
  - d. According to the application for the Development Permit under appeal before the Board, the Appellant now seeks to remove one existing Freestanding Minor Digital On-premises Off-premises Sign and replace it with a double sided Minor Digital On-premises Off-premises Sign with a Digital Sign Area of 18.58 square metres. The Digital Sign Area will double and the static area will be removed. The proposed Sign will be approximately 2 metres less in Height, but with approximately the same total Sign Area. The Sign will be built at the same location along the west lot line of the Unit 10, but will extend further to the east away from Parsons Road.
- [60] The Board finds the proposed development is reasonably compatible with surrounding area for the following reasons
- a. The proposed development is consistent with the general purpose of the (EIB) Ellerslie Industrial Business Zone found in section 930.4(1) which states “the purpose of this Zone is to provide for light industrial businesses and high technology development that carries out their operations such that no nuisance factor is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent Non-industrial Zone.”
  - b. Based on the photographic evidence, this area is purely commercial and industrial, there are no residential uses in close proximity.
  - c. The photos also show that commercial signage is typical in the immediate area.
  - d. The dimensions of Unit 10, the supporting documents provided by the Appellant and the ultimately approved Plan of Subdivision all indicate that a Sign is an appropriate development and was contemplated at this location on the small rectangular unit.
  - e. No planning reasons to deny the application were brought to the attention of the Board.
- [61] The parties disagreed about the applicable development regulations and consequently about the required variances.

- [62] The Development Officer took the position that three variances were required (two for the Setback and one for the separation distance) and that they should not be granted. The Appellant argued that no variances were required, but alternatively that if any were found to be required, then they should be granted based on the Board's general variance test set out in section 687(3)(d) of the *Municipal Government Act*.
- [63] The Appellant questioned whether Setback regulations were intended to apply to Signs at all. He acknowledged that on a technical, straight reading of the *Edmonton Zoning Bylaw*, Signs seem to fall within the wide definition of buildings or structures and therefore would be subject to Setback rules. However, he also noted that if Signs are generally subject to Setbacks, then Schedule 59F.3(6)(j) which states Signs with a Sign Area greater than 8.0 metres squared cannot be located within Setbacks is redundant and that result is contrary to general rules of statutory interpretation. If Setbacks apply to Signs generally, then this section should not contain a prohibition, it should provide an exception to the generally applicable rules and allow Signs 8.0 square metres and under to be located in required Setbacks. Therefore there is room for the argument that Setbacks do not apply at all to Signs so no variance to section 930.4(4)(3) is needed. The Appellant also indicated he was happy to agree that a Setback applies in this case and that a variance is warranted.
- [64] The Board finds that Signs are not generally exempt from Setback requirements for the following reasons:
- a. The *Municipal Government Act* defines "development" and "building" very broadly. In section 616,
    - (b) development means
      - i. an excavation or stockpile and the creation of either of them,
      - ii. a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,
      - iii. a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
      - iv. a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;
    - (a.1) "building" includes anything constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road;
  - b. The definition of Sign in section 6.2(23) of the *Edmonton Zoning Bylaw* includes its physical structure.

- c. Section 6.1(97) of the *Bylaw* defines Setback as “the distance that a development or a specified portion of it, must be set back from a property line...”
- [65] Based on a purposive and plain reading of these provisions, the Board finds that Signs are clearly developments and therefore per section 6.1(97), Signs are generally subject to Setback regulations.
- [66] Further, on its face, section 930.4(4)(3) 6.0 metres Setback applies to all Permitted and Discretionary Uses (which includes Minor Digital On-premises Off-premises Signs per section 930.4(3)(33)).
- [67] Without an express provision excluding Sign developments from Setback regulations, the Board is not persuaded that the wording of schedule 59F.3(6)(j) justifies or necessarily leads to the conclusion that Signs are not generally subject to Setback regulations throughout all zones, nor to the generally applicable Setback requirement in the EIB zone.
- [68] The Board grants the variance to the 6.0 metres Setback required per section 930.4(4)(3) for the following reasons:
- a. A large Freestanding Sign, 10 metres in Height and of comparable Sign Area, was approved and has been in place at this location for several years without any known complaint.
  - b. The City previously approved the conversion of a portion of the Copy Area from static panels to a Digital Sign at the same Setback.
  - c. The proposed development will be no closer to the roadway than the existing Sign and it will be 2.0 metres lower in Height and extend further to the east away from the property line.
  - d. The proposed development and its location were reviewed by Transportation Planning and Engineering who indicating they had no objections to the proposed Sign as shown on the submitted site plan.
  - e. The impact of this variance is ameliorated by the current situation on the subject Site and adjacent roadway. While the proposed Sign will be located at the west lot line, the lot line itself is separated from existing edge of Parsons Road by a boulevard in excess of approximately 19.80 metres in width.
  - f. If the road were to be widened in the future, or if other surrounding conditions change such that the Sign contributes to safety concerns, then pursuant to the conditions imposed by the Board, Transportation Planning and Engineering Services may order the Sign to be de energized or order the Appellant to take steps to ameliorate those concerns.
  - g. As the proposed development has been approved for a term of 5 years, its suitability will be reconsidered in the future.

- h. The Board received a letter from an affected neighbour objecting to the proposed development on the basis that a variance was required and on vehicle visibility concerns. As noted above, Transportation Planning and Engineering reviewed the proposed development and raised no traffic concerns. While the neighbours object to variances in principle, they have not identified any specific negative impact associated with this variance.
- i. The Board notes that the most recently approved permit required the same Setback variance and given the location and limited dimensions of Unit 10 it is difficult if not impractical to build any development which complies with section 930.4(4)(3).

[69] The remaining two variances cited by the Development Officer in the reasons for refusal relate to regulations found in Schedule 59F. The Appellant argued that Schedule 59F was not applicable and therefore variances were not required.

[70] The Board finds that Schedule 59F does not apply for the following reasons:

- a. The subject Site is located in the EIB Ellerslie Industrial Business Zone established in Section 930.4 of the Bylaw.
- b. Section 930.4(4)(12) is clear on its face. It states “Signs shall comply with the regulations found in Schedule 59J.”
- c. As Schedule 59J contained no regulations applicable to this type of use, the Development Officer, after consultation with legal counsel, determined that Schedule 59F shall apply. She came to this conclusion because she believed that City Council could not have intended for no regulations to apply. She chose Schedule 59F in particular as it is the Sign schedule that applies to IB Industrial Business Zones.
- d. The Development Officer could provide no specific authority for her decision to substitute Schedule 59F due to an apparent omission. She considered this decision part of her discretionary authority.
- e. The Board notes that there are other remedial sections in the Bylaw which deal with lack of regulations and provide direction for application of other provisions as, for example, Direct Control Districts, but no equivalent remedial provisions apply to this type of situation which involves an apparent erroneous omission.
- f. The EIB Ellerslie Industrial Business Zone has been in place since 2001 and has been revised on several occasions, most recently September 11, 2017. Section 930.4(4)(12) has not changed. Sign Schedule 59J has been in place since 2011 and has also been revised as recently as 2015, yet no development regulations have been enacted to govern Minor Digital On-premises Off-premises Signs.
- g. The Board also notes that Schedule 59J.1 is of limited application, it applies to two specific areas: the EIB Ellerslie Industrial Business Zone and the EIM Ellerslie Medium Industrial Zone. By contrast Schedule 59F applies to 12 diverse zones. Some industrial, some commercial and some mixed zones which include residential components.

- h. In the absence of explicit discretionary authority to substitute an alternative Schedule, the Board is not prepared to deviate from the plain wording of Section 930.4(4)(12) and impose Schedule 59F development regulations which apply to all IB Industrial Business Zones as well as many other diverse zones.
- [71] The Appellant was amenable to all the proposed Conditions save the requirement of an 8 second or greater holding time. The change carries significant economic consequences.
- [72] The Board has imposed the conditions as proposed by the Development Authority with the exception of the Condition set out in paragraph 55[f][i] which the Board has altered to change the minimum Message Duration from 8 seconds to 6 seconds which is the minimum period allowed per the definition of Minor Digital On-premises Off-premises Signs in section 7.9(7) of the Bylaw.
- [73] The Board notes that there are no reasons cited in the email from Transportation for this deviation from the generally applicable 6 second minimum Message Duration set out in the Bylaw.
- [74] The Development Officer opined that the 8 second interval was imposed as part of the Transportation Canada guidelines, but could provide no additional information regarding the need for an additional 2 seconds in this particular Sign, nor any link to the Setback variance.
- [75] Absent any explanation, the Board has reaffirmed the 6 second Message Duration required under the *Bylaw* and notes again that the Conditions found in paragraph 55[f] empower Transportation to take steps to address any potential safety concerns.
- [76] For these reasons, the Board finds 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. Therefore, the Board allows the appeal and approves the proposed development with the variance to section 930.4(4)(3) and subject to the conditions outlined above.
- [77] In the event that the Board is in error and Schedule 59F should be applied despite the plain wording of section 930.4(4)(12), then two additional regulations concerning Setback and minimum separation distance must be considered.
- [78] The Board would approve the proposed development with two additional variances for the reasons that follow.
- [79] The Board would waive Schedule 59F.3(6)(j) which prohibits locating the proposed development within the required Setback for the same reasons that the Board granted a variance to the 6.0 metres Setback required in section 930.4(4)(3).

- [80] With respect to separation space, the Development Officer and the Appellant disagreed about whether the applicable distance was 100 or 200 metres based on differing interpretations about the meaning of Schedule 59F.3(6)(e). In particular, they differed about whether the determinative Sign Area should be based on the Sign Area for Digital Copy only or upon the combined Sign Area for Digital copy and static copy.
- [81] The Board finds this issue is moot as it would reach the same practical conclusion on the appeal regardless of its determination about the applicable separation distance.
- [82] If the Board were to find that the Appellant's view prevails and the required separation distance is 100 metres, then the proposed development complies with the regulation and the Board would approve it.
- [83] If the Board were to agree with the Development Officer's determination that the required separation distance is 200 metres and a 25 metres variance is required, then the Board would grant this variance and approve the proposed development for the following reasons:
- a. The nearest Digital Sign, the Husky Sign, is located 175 metres to the south along the same stretch on the east west of Parsons Road
  - b. Based on the photographic evidence, the Husky Sign is set back significantly from Parsons Road due to the continued width of the boulevard and its compliance with the 6.0 metres required Setback.
  - c. The staggered locations of the two Signs along the same side of the road, together with the intervening building, visually separate them, ameliorating any potential impact of the variance to separation distance.
  - d. The proposed development will replace an existing Sign at the same location of greater Height and similar Copy Area. It will not add to the number of Signs, nor to proliferation of Signs in the immediate area.



Ms. K. Cherniawsky, Presiding Officer  
Subdivision and Development Appeal Board

**Important Information for the Applicant/Appellant**

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.
2. Obtaining a Development Permit does not relieve you from complying with:
  - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
  - b) the requirements of the *Alberta Safety Codes Act*,
  - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
  - d) the requirements of any other appropriate federal, provincial or municipal legislation,
  - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, RSA 2000, c M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

*NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.*