



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: April 13, 2017
Project Number: 235577340-001
File Number: SDAB-D-17-059

Notice of Decision

- [1] On March 30, 2017, the Subdivision and Development Appeal Board heard an appeal that was filed on March 2, 2017. The appeal concerned the decision of the Development Authority, issued on February 23, 2017, to approve the following development:

Install (1) Freestanding Minor Digital Off-premises Sign (6.1 m x 3 m - facing N/S)

- [2] The subject property is on Plan 5701HW Blk 11 Lot A, located at 12435 - 97 Street NW, within the CSC Shopping Centre Zone. The Yellowhead Corridor Area Structure Plan applies to the subject property.

- [3] The following documents were received prior to the hearing and form part of the record:

- Copies of the development application, Development Permit decision and plans;
- Memorandum from City of Edmonton Transportation Planning and Engineering;
- Development Officer's written submissions dated March 21, 2017;
- Appellant's supporting materials, including Appendix A; and
- Prior decision of this Board, reference file SDAB-D-15-126.

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

- Exhibit A – Termination of Digital Sign lease submitted by Appellant
- Exhibit B – Print-out from edmonton.ca
- Exhibit C – A series of Google maps and street view photos

Preliminary Matters

- [5] At the outset of the appeal hearing, the Presiding Officer disclosed that both he and another panel member, Mr. J. Wall, were acquainted with Mr. R. Colistro, legal counsel for the Respondent. Mr. Colistro had been the former Chair of the Subdivision and

Development Appeal Board two years prior. The parties in attendance expressed no opposition to the composition of the panel.

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

Summary of Hearing

i) Position of the Appellant, Northgate Veterinary Hospital

- [8] The Appellant was represented by Mr. D. Ezeard, the Director of Real Estate with Media City. The owner of the property, Ms. L. Schram was also present.
- [9] Mr. Ezeard referred to a lease agreement for the placement of a sign at 12429 – 97 Street, dated December 7, 2011, between the property owner (“901334 Alberta Ltd.”), and the tenant of said property (the “Northgate Veterinary Hospital”). (Exhibit A from Appellant’s Supporting Materials)
- [10] He also referenced Exhibit B from his Supporting Materials, consisting of a copy of the approved Sign Combo Permit application at 12429 – 97 Street which was applied for on December 12, 2011, and subsequently issued to Icewerx Consulting Ltd. (“Icewerx”) on January 25, 2012.
- [11] In September 2014, Mr. Ezeard was employed by CBS Outdoor (“CBS”), and made an application to construct a Minor Digital On-premises Off-premises Sign at 12435 – 97 Street, which is the subject location of today’s appeal. CBS’s approved permit was appealed by Icewerx, which submitted it held a valid permit for a sign at 12429 – 97 Street. Icewerx submitted that although construction of the sign had stalled, the permit remained valid as construction had started within the prescribed time lines. On July 16, 2015, a panel of the Subdivision and Development Appeal Board issued a decision confirming that Icewerx held a valid permit, therefore, CBS’s application for a sign at the neighbouring property located at 12435 – 97 street was refused.
- [12] Mr. Ezeard then showed Exhibit D from his Supporting Materials, which was a registered letter from the law firm of Witten LLP, and a Court Order requiring that any revenue generated by the sign was to be paid to the Royal Bank of Canada.
- [13] The property owner then contacted her lawyers and advised them to terminate the contract with Icewerx due to lack of payment and lack of progress on the sign construction. A copy of this letter terminating the digital sign lease agreement effective August 28, 2016, was submitted as “Exhibit A” during the hearing. With the agreement terminated, Icewerx approached the neighbouring property and made an application for a sign at that location.

- [14] The original permit issued to Icewerx for the sign at 12429 – 97 Street expired on January 25, 2017. Since work was never completed, the Appellant hired a new sign company (Media City) to erect a sign and an application was made on January 20, 2017, a few days before the Icewerx permit was due to expire on January 25, 2017.
- [15] The new sign contractor, Media City, submitted that it was clear that Icewerx was having financial problems as the only work ever completed was a pole and some electrical work. No payment was ever made to the Northgate Veterinary Hospital, which is just trying to install a sign under the existing permit. The income generated from the sign will help pay taxes and make building improvements.
- [16] The grounds for this appeal is that there was a valid permit in place for 12429 – 97 Street which was originally taken out by Icewerx in 2012. That permit was valid for 5 years and the permit renewal date would have been January 25, 2017. The new permit was applied for on January 20, 2017, a few days before the expiry of the original permit. Mr. Ezeard questioned why a development application was accepted for a neighbouring property (and subsequently granted) when the permit for 12429 – 97 Street had not yet expired.

ii) *Position of the Development Officer, Mr. S. Ahuja*

- [17] Mr. Ahuja confirmed that an approved sign permit is attached to the land and that the owner of the land owns the permit, not the sign company who filed the application.
- [18] The permit at 12429 – 97 Street was approved for Icewerx in 2012 for a period of 5 years. He showed the existing plan attached to the 2012 application which had no official stamp of approval on it; he was not able to locate the document with the official stamp.
- [19] The permit that CBS had applied for at 12435 – 97 Street in September 14, 2014, was refused by the SDAB because Icewerx had a valid permit for a sign at the Northgate Veterinary Hospital location. That permit was found valid by the SDAB because the electrical work had commenced within 90 days as required by subsection 25(1)(a) of Alberta's *Safety Codes Regulation*, Alta Reg 2014/2007. Subsection 25(1)(b) also states that "a permit expires if the undertaking to which it applies... is suspended or abandoned for a period of 120 days".
- [20] Mr. Ahuja then referenced section 22 of the *Edmonton Zoning Bylaw* which deals with the expiry of development permits. Subsection 22(4)(a)(ii) required that the work on this permit be commenced within two calendar years from the approval date. This section was complied with because the pole was installed within this time frame.
- [21] Subsection 22(6) of the *Edmonton Zoning Bylaw* also states:

Notwithstanding subsection 22(4)(a)(ii) above, if a building permit for the development is applied for and the appropriate building permit fee as determined by City Council is paid within the two calendar year period,

the Development Permit issued shall not expire unless and until the building permit so issued is cancelled or allowed to expire by virtue of work not having commenced within the statutory minimum period.

- [22] Mr. Ahuja requested direction from the City solicitor regarding the aforementioned provisions from the bylaw and the provincial legislation, and how he should apply them to the Northgate Veterinary Hospital permit.
- [23] At first blush, it would appear that the permit was valid until the expiry date of January 25, 2017. However, the permit issued in 2012 states that the sign “shall be installed 6 metres from the property line”. Since the pole was not installed in accordance with the approved permit, the permit has been made invalid. Although there is a discrepancy between the drawings and the permit, the Development Officer relied on the information written in the permit as per Section 13.1(5) of the *Edmonton Zoning Bylaw* which states that “In the event of a discrepancy between any written description and the drawings, the written description shall prevail.”
- [24] The Development Officer did not make the property owner aware that the location of the pole was not in accordance with what was approved as he only became aware of this when the renewal application was made. Icewerx’s permit application for the new location at 12435 – 97 Street was not approved until March, which was well after the expiry of Icewerx’s original permit at the 12429 – 97 Street location.
- [25] When the new application arrived in December 2016, Mr. Ahuja used a software program to check where the pole on the original application was installed, but he could not confirm the exact measurement. His decision to approve the new permit application was not made until after the survey showed the pole at the Northgate Veterinary Hospital location was not installed six metres from the property line as required by the permit.
- [26] With respect to the Appellant’s question about Sustainable Development’s procedures when processing applications, Mr. Ahuja stated that the Development Authority cannot refuse to accept a permit application. In this case, no decision was made on the new application until well after the expiry date of the old permit.
- [27] Although the Northgate Veterinary Hospital permit was a matter of discussion before the SDAB in 2015, no plans were provided at that time to show the actual installation location of the pole at the Northgate Veterinary Hospital location. The only documents provided were to confirm that electrical work had commenced within 90 days.
- [28] Mr. Ahuja could not confirm when the pole was installed.

iii) Position of the Respondent, IceWerx

- [29] The Respondent was represented by legal counsel, Mr. R. Colistro.

- [30] The matter before this Board is an appeal of an approved permit for a digital sign without variances, issued on February 23, 2017. Notices were sent out to property owners within a 60 metre radius because the proposed development is a discretionary use.
- [31] Lease agreements and prior history are irrelevant as the Board cannot delve into private disputes. The Board only deals with planning matters as set out in the *Edmonton Zoning Bylaw* and the *Municipal Government Act*.
- [32] The subject sign was approved because it was determined that no other valid sign permits existed within the required separation distance. This approach, as adopted by the Development Authority, was correct. The sign permit for the Northgate Veterinary Hospital expired by virtue of the fact that the pole was in the wrong place.
- [33] Mr. Colistro showed a print-out of a map which he obtained from the edmonton.ca website (marked “Exhibit B”). This website shows the status of development permits within the City of Edmonton, and Exhibit B focused specifically on the Northgate Veterinary Hospital site, showing that the application was created on January 20, 2017, and was refused.
- [34] He searched the *Edmonton Zoning Bylaw* and found no provisions to the effect that a renewal application gets priority over other development applications. The filing date of the Development Permit application is therefore irrelevant.
- [35] Digital signs are considered to be a discretionary use in the CSC Shopping Centre Zone, which allows the Development Officer to evaluate various planning factors prior to deciding whether or not to issue a permit. There is no special process for permit renewals – a new application must be made once the five year time limit imposed on a permit has expired. An application is not automatically approved by virtue of being a renewal application.
- [36] Mr. Colistro reviewed a series of Google maps and street view photographs (marked “Exhibit C”) to show that the proposed development is reasonably compatible with the surrounding area and should be allowed as a Discretionary Use. No variances have been granted, and the proposed development complies with all requirements of the *Edmonton Zoning Bylaw*, including separation distance. Exhibit C illustrates the following:
- a) The proposed development is located in a commercial area and the subject property is on the north end of the site bounded by 97 Street to the west and Yellowhead Trail to the north.
 - b) Signs are commonly associated with commercial areas and the photos show other signs present along the service road which runs along 97 Street.
 - c) The subject sign is highly unlikely to pose a distraction to users of the cemetery located to the west across 97 Street.

- d) One of the photos shows the existing pole at the Northgate Veterinary Hospital in close proximity to the sidewalk, which does not meet the six metre setback requirement.
- e) There is a residential area to the east, but the sign has been designed to project light away from the residential area.

[37] Signs are reasonably compatible to other developments in this area because the Appellant proposes to do the exact same thing on their site. No concerns have been brought forward by the City of Edmonton's Transportation, Engineering and Planning Department.

[38] The information from the sign manufacturer is that the sign adjusts automatically for ambient light.

[39] The conditions imposed by the Development Authority are all acceptable and the Respondent understands that the permit is valid for five years, at which time a new application would have to be made.

vi) Rebuttal of the Appellant

[40] The only reason that the Development Officer found out that the pole was in the wrong place was because the Appellant did the right thing and had a proper survey of the property completed. The survey is more accurate than the Respondent's overhead shots obtained from Google Maps, which show a three to five metre variance from the actual situation.

[41] When Icewerx applied for the subject development, the City started working on the approval prior to the expiry of the Northgate Veterinary Hospital permit.

[42] While the Respondent's lawyer submits that nothing in the *Edmonton Zoning Bylaw* states that a renewal application automatically gets approved, it is common sense that if one possesses a valid permit, a neighbouring property owner cannot simply apply for a development that would invalidate one's permit.

[43] In summary, the Appellant was trying to do the right thing by submitting a new application showing the pole located in the correct place on the Northgate Veterinary Hospital lot.

Decision

[44] 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 CONDITIONS as set out in Permit Number 235577340-001, issued by the Development Authority on February 23, 2017.

Reasons for Decision

- [45] The proposed development is for a Freestanding Minor Digital Off-premises Sign located at 12435 – 97 Street, which is in the CSC Shopping Centre Zone. A Freestanding Minor Digital Off-premises Sign is a Discretionary Use within this zone.
- [46] The proposed Sign Area is 10 x 20 feet, or approximately 18.6 square metres. Under subsection 59E.3(2)(g) of the *Edmonton Zoning Bylaw*, where a proposed Sign Area is less than 20 square metres, the minimum separation distance to other Off-premises Signs is 100 metres.
- [47] During the course of the hearing, the Board heard various submissions from all parties in attendance regarding the validity of an Off-premises Sign permit located at 12429 – 97 Street. Based on these submissions and various information presented to this Board, the Board grants the development permit for Icewerx located at 12435 – 97 Street for the reasons that follow.
- i) Each hearing of the Board is considered on its own merits, and the Board is not bound by its prior decisions.*
- [48] The Appellant Northgate Veterinary Hospital, represented by Media City, submitted that it held a valid Off-premises Sign permit located at 12429 – 97 Street, which is less than 100 metres from the proposed Sign. In support of its position that it holds a valid permit, the Appellant submitted various documents, including a 2015 Subdivision and Development Appeal Board (“SDAB”) decision where a panel of this Board held that the Veterinary Hospital did indeed hold a valid permit. At the time, the Board relied on information produced at the hearing which demonstrated that there had been some electrical work done on the sign within 90 days of the permit’s approval, thereby validating the permit.
- [49] The Board notes that hearings of the Subdivision and Development Appeal Board are *de novo*, that is, each appeal is considered on its own merits, and this Board is not bound by its prior decisions. Furthermore, the Board is in receipt of new information which was not previously available to the panel that rendered the 2015 decision. Specifically, in 2015, no information was presented to the Board as to the location of the Sign pole located at 12429 – 97 Street. The Board is now in receipt of information that the Sign pole was installed within the required setback in contravention of the permit. The Board considers this new information as a relevant factor in determining whether the Northgate Veterinary Hospital holds a valid permit.
- ii) The Development Authority cancelled the Freestanding Off-premises Sign permit located at 12429 – 97 Street pursuant to its authority under section 17.2(1)(a).*
- [50] The Development Authority submitted that the Northgate Veterinary Hospital permit was invalidated due to the incorrect installation of a Sign pole. The Development Officer

acknowledged that the plans accompanying the 2012 Veterinary Hospital Sign permit shows the Sign to be installed within the required setback. However, one of the written conditions of the permit was that “No part of any Freestanding Off-premises Sign shall be located within any Setback. (Required Setback 6m)”.

- [51] The Development Officer referenced section 13.1(5) of the *Edmonton Zoning Bylaw*, which states that “In the event of a discrepancy between any written description and the drawings, the written description shall prevail.” In this case, the written description requires a 6 metre setback. As such, the Northgate Veterinary Hospital Sign permit was invalidated by virtue of the Sign pole being installed within the 6 metre setback.
- [52] The Board is not convinced by the submissions of the Development Authority on this point. Read in its entirety, section 13 of the *Edmonton Zoning Bylaw* deals with development permit applications, and provides guidance to the Development Officer in the event that a development application (and accompanying drawings or documentation) contains errors, requires further clarity and/or corrections. Section 13 does not address situations where there are discrepancies between what was illustrated in the drawings, what was approved in the permit, and what was ultimately constructed.
- [53] Rather, the relevant provision of the *Edmonton Zoning Bylaw* that applies in this case is section 17, which deals specifically with the validity and cancellation of development Permits. Specifically, subsection 17.2(1)(a) states that “The Development Officer may cancel a Development Permit following its approval if... any person undertakes development, or causes or allows any development to take place on a Site contrary to the Development Permit.” On this basis, the Board finds that the Development Authority exercised its authority under subsection 17.2(1) and cancelled the Northgate Veterinary Hospital Sign permit because the Sign pole was installed contrary to the permit, which prohibited the Sign from being installed within the required six metre setback.

iii) The proposed development is compatible with the surrounding area.

- [54] Having found that there are no valid sign permits within 100 metre separation distance of the proposed development, the Board must now consider whether the development should be granted as a discretionary use in the CSC Zone. The Board notes that no variances to the regulations of the *Edmonton Zoning Bylaw* are required. The determination of whether to grant this development as a discretionary use therefore requires that the Board consider its compatibility with the surrounding area.
- [55] The development is located in a commercial area on 97 Street. Photographic evidence shows that there are other signs installed along a service road running along 97 Street. The Board also accepts that potential impacts of the proposed Sign upon the residential area to the east have been mitigated, as the Sign face is designed to project light away from this area. The sign can also self-adjust for ambient light.
- [56] The Board notes that no opposition was submitted by the City of Edmonton’s Transportation, Engineering and Planning Department, and with the exception of the

Appellant, no opposition was submitted by property owners within the 60 metre notification area.

[57] For the above reasons, the Board finds that the proposed development is compatible with the surrounding area. The appeal is denied and the development is granted.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. R. Hachigian; Ms. S. LaPerle; Mr. J. Wall

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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SDAB-D-17-060

Install (1) freestanding Minor Digital On-premises Off-premises Sign
(2 digital panels 3.1m x 6.1m facing NE/SW) replaces DP:
163889410-001/2 (MEDIA CITY ADS - MOBILE INSURANCE)
12320 - Mount Lawn Road NW Project No.: 163889410-004

The above application was withdrawn by the Applicant therefore the appeal file has been closed.