

Edmonton Subdivision and Development Appeal Board

Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
Email: sdab@edmonton.ca
Web: www.edmontonsdab.ca

Date: July 31, 2015
Project Number: 169796633-001
File Number: SDAB-D-15-151

Notice of Decision

This appeal dated June 18, 2015, from the decision of the Development Authority for permission to:

Install (1) Freestanding Minor Digital Off-premises Sign

On Condo Common Area (Plan 0524641), located at 103 - Haddow Close NW, was heard by the Subdivision and Development Appeal Board at its hearing held on July 16, 2015. The decision of the Board was as follows:

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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to refuse an application to install (1) Freestanding Minor Digital Off-premises Sign, located at 103 Haddow Close. The subject Site is zoned DC2.533 Site Specific Development Control Provision. The development permit was refused because the proposed Minor Digital Off-premises Sign is contrary to Section DC2.533.4(k)(i) because the illumination from the Sign will unduly interfere with the enjoyment of the residents of the Single Detached Houses and Apartment House that are located in close proximity and it was the opinion of the Development Authority that a Freestanding Minor Digital Off-premises Sign is inappropriate for this location.

Prior to the hearing the following information was provided to the Board:

- An extensive written submission from the Appellant dated July 14, 2015
- A Power Point presentation from the Appellant received July 16, 2015
- A written submission from the Development Authority received July 16, 2015

The Board heard from Mr. J. Murphy with Ogilvie LLP, Appellant, who is representing Pattison Outdoor. Mr. Murphy provided the following information:

1. He took the Board through his written submission which had been previously submitted.
2. Section 641 of the *Municipal Government Act* applies as the proposed development is within a Direct Control District, but council has not taken complete control and has delegated discretion to the Development Authority and therefore an appeal to the SDAB still lies to the Board.
3. The Development Officer improperly used his discretion because he likened the zone to the CNC Zone under the new *Edmonton Zoning Bylaw 12800* rather than the CNC Zone under the old *Land Use Bylaw 5996*.
4. He provided some background about the proposed Sign. The area of the proposed Sign is 27.9 square metres; less than half the area permitted in the old bylaw which is 65 square metres. The proposed Sign meets all Setbacks, and is located on a frontage where the Direct Control allows it to be placed.
5. Under the new *Edmonton Zoning Bylaw*, Signs are designated as Uses of land. In contrast, under the former *Land Use Bylaw*, which applies in this circumstance, Signs are a regulated matter.
6. Under the new bylaw, this Sign would be considered a Minor Digital Off-premises Sign; however, since it falls under the former bylaw it is considered a Freestanding General Advertising Sign and falls within the category of a Billboard Sign. More explicitly it is a digital poster panel with static images. Freestanding General Advertising Signs are allowed as per Section 79D.1(1)(e) of the *Edmonton Land Use Bylaw 5996*.
7. The proposed Sign will have no impact on residential properties as it will not be directed at the single family dwellings directly to the south and across Riverbend Road.
8. The Development Officer's reasons for refusal indicated there are some four storey Apartment Buildings that will be impacted. There are no four storey apartments in the area; however there are some two storey townhouses 225 metres away.
9. To demonstrate the lack of impact of the Sign on the two storey townhouses, he provided the Board with a Google view of the proposed Site and identified the location of the proposed Sign which showed the sight line from the townhouses back to subject Site with a 225 metres separation. (Tab11 of his written submission)
10. He compared his proposed Sign with the City-owned Sign located 500 metres to the east at the Terwillegar Recreation Centre (Recreation Centre). In contrast to this proposed Sign, the Sign located at the Recreation Centre is likely a Major Digital Sign as it is a moving Sign with backlit panels below. The City's Sign is visible from both sides and is significantly larger than the proposed Sign.
11. The City's Sign is 88.25 metres, 107 metres and 179 metres away from the three most impacted single-family dwellings. To his knowledge there have been no complaints regarding the Recreation Centre's Sign. He contended that if the Recreation Centre's Sign can exist in such close proximity to the residential area, clearly the proposed Sign is not so bad.
12. He showed two videos to portray the visual impact of the Sign at the Recreation Centre on the residential properties to the south of that Sign. The City of Edmonton approved the Recreation Centre's Sign and that set the standard for the area.

13. He provided a Google aerial image and discussed the lateral distance between the proposed Sign and the neighbours to the south and calculated the distance as 46.76 metres away from the property line of the neighbours to the south. A similar Google aerial image of the City owned Sign shows it is 47.3 metres away from its neighbours to the south. The lateral distance between the two Signs and the respective neighbours is almost identical.
14. The only difference between the Recreation Centre's Sign and the proposed Sign is that the proposed Sign is located and designed in a way so as not to interfere with neighbours as much as the City's Sign does.
15. There are no neighbours in attendance today and no one had expressed opposition to the Sign.
16. He relied on the authority of Mr. Laux's textbook to conclude that where council has left gaps in a Direct Control District or delegated its discretion, the Subdivision and Development Appeal Board (SDAB) may substitute its discretion for that of the Development Officer.
17. The CNC Zone under the new *Edmonton Zoning Bylaw* should not be used to assess the proposed Sign because Section 2.7 of *Edmonton Zoning Bylaw* indicates "... any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that is in effect at the time of the creation of the Direct Control District or Provision." DC2.533 references the *Land Use Bylaw* and specifically applies Sign regulations from the *Land Use Bylaw*. *Cameron Corp v Edmonton (Subdivision Development Appeal Board)*, 2012 ABCA 254 supports this position.
18. The Development Officer applied the CNC Zone and definitions of the *Edmonton Zoning Bylaw* when he ought to have applied the CNC Zone and definitions of the *Land Use Bylaw*. The CNC Zone in the *Land Use Bylaw* makes no reference to Signs as they were not considered a Use of land and instead contains a Sign Schedule that applies (79D Sign Schedule for Land Use Districts: CNC and CSC).
19. He emphasized that it was clear that the Development Officer failed to follow the directions of Council because of his use of the word "notwithstanding" which indicates not just a failure to comply with, but a defiance of Council's order.
20. DC2.533.4(1) which Signs on the street frontage of Haddow Close and limits Signs to two along Riverbend Road. The Direct Control Provision does not create a restriction along Terwillegar Drive. The proposed Sign is at the intersection of Terwillegar Drive and Riverbend Road. The proposed Sign is along the Terwillegar Drive frontage; however, even if it were along Riverbend Road the frontage still complies with subsection (1) because currently there is only one other Sign located on Riverbend Road.
21. They have met all of the development regulations in the Direct Control District and all regulations under Section 79 of old *Land Use Bylaw*.
22. The required distances between billboards under Sign regulations is a minimum of 100 metres, in this case the Signs would be separated by 500 metres.
23. Although under the old *Land Use Bylaw*, there are no time limits imposed on the Development Permit for General Advertising Signs or Billboard Signs or specific rules for Digital Signs, the Board has jurisdiction to place these conditions on the Development Permit. The Appellant will consent to conditions that would apply to Digital Signs under

the new *Edmonton Zoning Bylaw*, including the requirement to remove the Sign if it posed a traffic hazard, consent to a five year limit and comply with the maximum brightness level of the Sign.

24. The proposed Sign complies with all of the General Provisions under Section 79.8 of the *Edmonton Land Use Bylaw 5966* (submitted as Exhibit “A”) including required separation distances for Billboard Signs under Section 79.8(2)(b).
25. The proposed Sign will be angled away from the backyards of single-family dwellings to the south.
26. The proposed Digital Sign will have less of a light impact than the older billboard Signs with spotlights because it does not have the light reflection of older Signs.
27. The curved nature of the Sign was to add pixels to the image for clarity and did not create a circular image that would impact the neighbours.

The Board heard from Mr. S. Ahuja, representing the City of Edmonton Sustainable Development Department who provided the following information:

1. The Sign at the Recreation Centre was approved as a Minor Digital Sign and not a Major Digital Sign although he had received some complaints that it is operating as a Major Digital Sign.
2. Even though there are no records of any complaints regarding the Sign it is improper to infer that people are happy about the Sign.
3. Signs are not a listed Use in DC2.533 because at the time the *Land Use Bylaw* was passed Signs were treated as regulated matter.
4. He applied the criteria listed under the *Edmonton Land Use Bylaw 5996* when assessing the Development Permit application. He characterized the Sign as a General Advertising Sign, more specifically a Billboard Sign.
5. The grounds for appeal indicate there are no restrictions on Signs on Terwillegar Drive. He indicated any Signs located on Terwillegar Drive must still comply with DC2.533.4(k) which requires that there be no adverse visual impact on surrounding residential properties.
6. He showed the Board a copy of the Site Plan and the position of the Sign on the Site Plan indicating the Sign will face southeast. A second visual representation showed the expected path the light may travel from the Sign. Based on this analysis, he indicated light would be coming off the side of the Sign onto the residential properties to the south.
7. He conceded that the characterization of the buildings across Terwillegar Drive as four storey apartment buildings was incorrect, but noted there was no intervening screening between the Sign and these two story townhouses therefore they will be impacted.
8. He had relied on the provisions of the CNC Zone under the *Edmonton Zoning Bylaw* to interpret the purpose set out in the Site Specific Development Control Provision Bylaw, particularly as to what is compatible with surrounding residential properties.
9. He had not refused the proposed development based on the requirements of the CNC Zone under the *Edmonton Zoning Bylaw*.
10. DC2.533.5(a)(vii) wherein gas pumps require screening evidence the concern that visual intrusions are inconsistent with the character of the area.
11. In his conversation with people in the sign industry, he understands that a curved Sign such as the one proposed provides more of a viewing angle.

12. The key reason for refusal was the visual impact on the neighbouring residential properties.

Mr. Ahuja provided the following responses to questions:

1. He conceded that 225 metres is a long distance away from a Sign. Some regulations say Digital Signs need only be separated from residential properties by 60 metres. He noted there was no screening between the proposed Sign and the residential properties to stop light pollution. The Sign did not have a stationery image but was changing.
2. He confirmed light would be thrown onto the three corner residential properties to the south.
3. When he asked how he determined the angle of where the light is thrown he advised this analysis is based on his opinion.
4. The City of Edmonton often gets complaints once a Sign is built even if there are no objections at the time of the SDAB hearing.
5. He did not know the reasons for the approval of the City owned Sign at the Recreation Centre, but noted that Sign is not in a Direct Control District and is not approved as Major Digital Sign. The fact that it is operating as Major Digital Sign is a compliance issue.
6. He applied the provisions related to General Advertising Signs under the *Edmonton Land Use Bylaw* and could demonstrate this to the Board by showing them his technical report. He only used the language from the *Edmonton Zoning Bylaw* in his decision because it would add clarity when notices were sent out. If he had applied the provisions of the *Edmonton Zoning Bylaw* in his first reason for refusal that would have implied only pre-existing Signs would be allowed on this Site.
7. He conceded that maybe he should not have compared the development to the current CNC Zone, but as he followed the regulations of the CNC Zone under the *Land Use Bylaw*, he had followed the proper rules.
8. When asked to clarify whether he had rejected the permit solely based on the visual impact on neighbouring properties he advised that is one of two reasons. The second reason is the Sign is inconsistent with the intent of the Direct Control Zone.
9. He confirmed that the City of Edmonton Transportation Services Department had approved the Sign but that approval was based on transportation guidelines.
10. He conceded that his concerns for the impact on the residential neighbourhood were limited to the three single-family residential properties to the south and the two storey townhouses 225 metres away across Terwillegar Drive.

The Board heard from Ms. V. Ference-Berry representing the City of Edmonton Law Branch who provided the following information:

1. Digital Signs in Direct Control Zones can be tricky to analyze because they were not contemplated at the time that many Direct Control District bylaws were passed.
2. The general purpose of the Direct Control District needs to be explored in detail and the exact language indicating the design, placement and illumination needs to be considered.
3. While the Development Officer's decision may not be clear or explicit in his reasons, he is satisfied that the proposed development is inconsistent with the residential character of the neighbourhood.

The Development Officer then offered his view on how insufficient steps had been taken to reduce the visual impact of the Sign, including the orientation of the Sign away from residential properties. While it may not be a large impact, it will still be an impact.

Ms. V. Ference-Berry provided the following responses to questions:

1. She agreed with Laux's analysis of the Board's jurisdiction. The Direct Control District provided significant discretion to the Development Officer and she thought the Board could review this exercise of discretion.
2. She discussed how the Board should interpret DC2.533.4(l) which allows two Signs on Riverbend Road but submits that subsection DC2.533.4(k)(i) still needs to be met requiring consistency with the intended residential character of the development.
3. There is no test for reasonableness built into the language of the Direct Control District bylaw and reasonableness was left up to the determination of the Development Officer.
4. She was not aware of any Court of Appeal opinion applying Laux's view on the Board's appellate jurisdiction.
5. She discussed the language of the General Purpose of DC2.533, particularly the explicit contemplation of a number of Commercial Uses, but noted that the General Purpose also discussed Residential Uses. Subsection DC2.533.4(k)(i) was more relevant than the General Purpose provision.
6. She further conceded that the General Purpose sought to reduce the potential impact, not entirely eliminate it.

In rebuttal Mr. Murphy made the following points:

1. The Site Plan depicting the proposed Sign only shows the pole. The curvature of the Sign drawn on the Site Plan is simply for illustration purposes and is not necessarily how the Sign will be placed as it can pivot on the pole.
2. If the Board is concerned about an adverse impact on the three family homes to the south of the subject Site, it could place a condition that the projection of the Sign is outside of these three yards by drawing a line from the edge of the Sign away from the fence line of the most northeast corner lots.
3. The proposed development is consistent with the intended residential character of the neighbourhood as the Sign faces Terwillegar Drive, which is a non-residential area. He suggested that the requirement in the Site Specific Development Control Provision that gas pumps shall have screening is because gas stations penetrate further into a residential neighbourhood. Digital Signs are located on the perimeter and therefore do not have such a screening requirement.
4. He contended that it was always anticipated that a billboard of some sort would be placed on this Site. Council could have precluded Digital Signs as they became more prevalent but were content in applying the General Advertising Sign regulations to Digital Signs in this area.
5. Section DC2.533.4(k)(i) which provides there shall be "no adverse visual impact on surrounding residential properties" imports an element of reasonability. A Sign at a distance of 225 metres could not be a "reasonable adverse impact".

6. The Sign is positioned on the exterior periphery of the Site and projects into the Arterial roadway.
7. Its location is determined by the restriction in the Direct Control District on Signs and by the location of a gas line.
8. The curved Sign construction does not create a greater viewing angle; the shape permits more pixels and a clearer image.
9. He reiterated that the Development Officer failed to follow the direction of Council by using the CNC Zone of *Edmonton Zoning Bylaw 12800* rather than the CNC Zone in the *Edmonton Land Use Bylaw 5996*.
10. He reiterated that he would be agreeable to having conditions imposed on the Development Permit namely:
 - a. the conditions suggested by the City of Edmonton Transportation Services Department;
 - b. limits restricting the Sign if traffic concerns are raised;
 - c. limits on brightness of the Sign (measured in nits);
 - d. a 5 year limitation on the Development Permit; and,
 - e. a condition concerning the angle of the Sign.

Decision:

The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied to the Development Authority subject to the following CONDITIONS:

1. The Sign shall be placed such that no portion of the Sign encroaches onto City property;
2. The Freestanding General Advertising Sign is approved for five years and will expire on July 31, 2020;
3. That the frequency of change in the static digital display cannot be less than 6 seconds;
4. That each static digital display shall contain a single advertising copy and that split screen advertising is not permitted;
5. The Sign shall not be animated;
6. Due to its position, shape, colour, format or illumination, the proposed Freestanding General Advertising Sign shall not obstruct the view of, or be confused with an official traffic sign, signal or device, as determined by the Development Officer in consultation with the City Engineer;
7. The proposed Freestanding General Advertising Sign shall not display lights resembling the flashing lights usually associated with danger or those used by police, fire, ambulance and other emergency vehicles;
8. The proposed Freestanding General Advertising Sign shall not operate or employ any stereo option or motion picture projection, or use holography;
9. The proposed Freestanding General Advertising Sign shall be set back 5 metres from the property line;
10. The brightness of the proposed Freestanding General Advertising Sign shall be adjustable and controlled relative to ambient light, to the satisfaction of the Transportation Department;

11. That should at any time the Transportation Department 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 addressing the concern in another manner acceptable to the Transportation Department;
12. That the owner/applicant must provide a written statement of the actions taken to mitigate a safety concern identified by the Transportation Department within 30 days of the notification of the concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the Sign;
13. The maximum height of the proposed Freestanding General Advertising Sign shall not exceed 8.0 metres (26 feet);
14. That underground power be supplied to the proposed Freestanding General Advertising Sign; and
15. The Sign must be installed in a manner that ensures its copy will not be directed towards the residential properties directly south of the Sign; in particular the Sign must be oriented such that a line drawn directly out along the south edge of the sign will fall to the east of the property lines of the three residences located across Riverbend Road to the south as marked by the Board on the approved Aerial photo.

ADVISEMENTS:

1. Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Services will require a safety review of the sign prior to responding to the application.

Reasons for Decision:

The Board finds the following:

1. Section 641(4)(b) of the *Municipal Government Act*, Chapter M-26 states that despite Section 685, if a decision with respect to a development permit application in respect of a direct control district is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the Board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.
2. Section 2.7 of the *Edmonton Zoning Bylaw* states that unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference to a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control Provision.
3. The Board finds DC2.533 under Bylaw 12301 was approved in 2000, at which time *Land Use Bylaw 5996* was in effect. Further, Section DC2.533.4(k) states that Signs may be allowed in this District in accordance with Schedule 79D and the general

provisions of Section 79.1 to 79.9, inclusive, of the Land Use Bylaw. Therefore, Council has directed that the provisions of *Land Use Bylaw 5996*, rather than the *Edmonton Zoning Bylaw 12800*, must be applied in determining the application for the proposed Sign.

4. The Board's test with respect to Section 641(4)(b) is to determine whether or not the Development Authority followed the directions of Council. In this regard, the Board concludes based on the Reasons for Refusal, dated June 5, 2015 that the Development Officer did not follow the directions of Council for the following reasons:
 - a) The Reasons for Refusal include references to the purpose of the CNC Zone under Section 310 of the *Edmonton Zoning Bylaw 12800*, rather than to the purpose and development regulations of the DC2.533 under Bylaw 12301 which should have been applied.
 - b) The Reasons for Refusal cite a development regulation found at Section 310.3(24) of the *Edmonton Zoning Bylaw* (passed October 11, 2011) which restricts Freestanding Minor Digital Off-premises Signs to locations where such Signs Lawfully existed as of the effective date of Bylaw 15892.
 - c) Throughout the decision, the Sign is evaluated as a Freestanding Minor Digital Off-premises Sign. Under *Edmonton Zoning Bylaw 12800* which came into effect after this DC2 zone was established, Freestanding Signs and Minor Digital Off-premises Signs are defined use classes. There is no such use class under the *Land Use Bylaw* which treated signs as regulated items rather than use classes.
 - d) After assessing the Sign and the development regulations under the *Edmonton Zoning Bylaw 12800*, the development authority concludes: "Therefore, in the opinion of the Development Officer and notwithstanding the DC2(533) Zone a Freestanding Minor Digital Off-premises Sign is inappropriate for this location which, the general purpose are Signs restrictions are similar to the CNC Zone."
5. The Board further finds pursuant to Schedule 79.8 of *Land Use Bylaw 5996* that the proposed Sign is more appropriately defined as a General Advertising Sign and further determines this Sign to be a Billboard Sign as set out in Schedule 79.8(2).
6. The Board relies on the following in determining that the proposed Sign is a General Advertising Billboard Sign:
 - a) It is an Off-premises Sign which directs attention to a business, activity, product or services which is not provided on the subject Site;
 - b) There is no animation in the proposed Sign, rather it displays static images in 6-second intervals;
 - c) The proposed Sign complies with Section 79.8(2) of the *Land Use Bylaw, 5996* because it complies with the total Sign area and meets the height regulation; and
 - d) Nothing in *Land Use Bylaw 5996* prohibits Billboard Signs comprised of a media which displays static digital images.
7. Having determined that the Development Authority did not follow the directions of Council, the Board considered the merits of the proposed development. The Board also considered the Development Officer's submission and presentation with respect to the two main reasons for his refusal, that it had a visual impact as per DC2.533.(k)(i) and that it did not meet the General Purpose as laid out in DC2.533.1.

8. The Board approves the development, subject to the conditions set out above, for the following reasons:
 - a) General Advertising Signs are allowed in the DC2.533 district;
 - b) The Board has found that the proposed Sign meets the definition of a General Advertising Sign; and
 - c) The Board accepts the evidence that images on LED screens are static and has imposed conditions to prevent the advertisements from being animated, thereby mitigating the impact of the proposed Sign on the surrounding area.
 - d) Residential development to the south of the subject Site is separated by a widened four lane arterial roadway, the Sign is located to the most easterly part of the Site and the requirement as described in the conditions of approval concerning the orientation of the Sign and direction of the Sign copy away from the properties themselves will eliminate or at minimum mitigate any visual impact of the proposed Sign.
 - e) The Board notes it was the opinion of the Development Officer that this Sign would have an impact on a two storey townhouse development to the southeast of the proposed development. The Board concludes that given the separation distance of 225 metres, the many intervening traffic devices and vehicle lights on Terwillegar Drive, and Riverbend Road, as well as other ambient light that will be associated with this location, the Sign will have little if any visual impact on that specific Site.
 - f) The Board notes that while the General Purpose of this Direct Control District references compatibility with the adjacent residential land uses, it also refers to many commercial applications as permitted uses and further specifies appropriate locations for Signs within the Site.
9. The Board pursuant to DC2.533.4(l) has made a determination that the proposed Sign is the second of two Signs allowed to be located along the Riverbend Road street frontage.
10. The Board notes that there were no letters of opposition received, nor did anyone from the neighbouring community appear to speak for or against this appeal.
11. By imposing a five year time limit, all affected parties have a time to evaluate the impact of the Sign on the surrounding area.
12. The conditions imposed will ensure compliance with any setback requirements.
13. Based on the above, it is the opinion of the Board, that the proposed development is consistent with the general purpose as set out in Section DC2.533.1 and that the requirements of DC2.533.4(k)(i) and (l) have been satisfied.

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 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*,
 - 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*, R.S.A. 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board

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Churchill Building
10019 - 103 Avenue NW
Edmonton, AB T5J 0G9
Phone: 780-496-6079 Fax: 780-577-3537
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Web: www.edmontonsdab.ca

Date: July 31, 2015
Project Number: 162330611-003
File Number: SDAB-D-15-152

Notice of Decision

This appeal dated June 22, 2015, from the decision of the Development Authority for permission to:

Develop a Minor Impact Utility Service (Cromdale Bus Barn; Vehicle, equipment and material storage yard for LRT maintenance) as a Temporary Development; 5 to 6 years located on:

Plan 5850R Blk 18 Lot 12	11647 - 80 Street NW
Plan 5850R Blk 18 Lot 13	11651 - 80 Street NW
Plan 3759AF Lot 30	7805 - 117 Avenue NW
Plan 5850R Blk 17 Lots 2-11	11525 - 80 Street NW
Plan 5850R Blk 21 Lots 2-12	11615 - 79 Street NW
Plan 5850R Blk 18 Lots 16-25	11631 - 80 Street NW
Plan 5850R Blk 18 Lots 1-11, 26-30	11631 - 80 Street NW
Plan 5850R Blk OT	11555 - 80 Street NW
Plan 5850R Blk 18 Lots 14-15	11655 - 80 Street NW,

was heard by the Subdivision and Development Appeal Board at its hearing held on July 16, 2015. The decision of the Board was as follows:

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*, R.S.A 2000, c. M-26.

The Board heard an appeal of the decision of the Development Authority to approve an application to develop a Minor Impact Utility Service (Cromdale Bus Barn; vehicle, equipment and material storage yard for LRT maintenance) as a temporary development; 5 to 6 years. The subject Site is zoned PU Public Utility Zone.

The approved development permit application was subject to conditions and variances were granted to the minimum required Front, Rear and Side Setbacks and the Landscaping requirement for all Setbacks was waived. The approved permit was subsequently appealed by an adjacent property owner.

Prior to the hearing the Board was provided with the following information:

- A written submission from the Appellant received on July 16, 2015
- A written submission from the Respondent received on July 10, 2015
- A written submission from the Development Authority received on July 13, 2015
- A copy of the Parkdale Area Redevelopment Plan

The Board heard from the Appellant, Mr. C. Regimbald, who provided the following information:

1. His main concern is the noise currently coming from the lot. The LRT lot has an exemption from the Noise Bylaw and he is interrupted at night by the noise of equipment moving around in the yard.
2. Homeless people live and walk through the lot.
3. As can be seen in submitted photos of the Site, there has been damage to the roads and sidewalks in the neighbourhood which were recently been refurbished.
4. He has little visitor parking due to a fire hydrant in front of his house and all of the street parking associated with the lot.
5. Semi-trucks park and turn in the area and turn onto his property when exiting the lot.
6. He is very concerned about his property value and loss of sleep.
7. He would like to see the work area of the Site set back further.
8. He would prefer access from the southeast side of the lot so neighbours to the north and west are not disrupted. He feels allowing the proposed variances will make matters worse.

Mr. Regimbald provided the following responses to questions:

1. He thought requiring setbacks would help, but access to the lot is still close to his house and it would be better if the exits were moved elsewhere.
2. He understood that the lot was being enlarged to the curb line. This is supposed to be “Minor Impact Utility” but in his view the impact is becoming greater.
3. Visual impact is also a problem.
4. The empty parking lot outside of the fence is being used to dump gravel.
5. Problems associated with the lot include:
 - a. dust blows across the Site which affects the neighbours;
 - b. there is a lot of noise at night and a leaf blower is used to clear snow rather than a broom; and,
 - c. the wall of dandelions on the lot makes it hard to keep weeds out of his property.

The Board heard from Mr. C. Deegan, an affected property owner who provided the following information:

1. He agreed with all of the concerns expressed by the Appellant.
2. Using the Google aerial imagery, marked Exhibit "A" he provided context and reviewed the activities occurring on the Site.
3. Since the bus barn building was taken down, sound from Northlands and from the subject Site now travels across the lot and into his property.
4. Debris, dirt, and dust blow into the neighbourhood from the lot.
5. The garbage bin that was on the Site has been removed but people are still dumping garbage there.
6. He feels a noise barrier is required.
7. He is disturbed by the moving of gravel at night between 4 a.m. and 5 a.m.

Mr. Deegan provided the following response to questions:

1. When asked about the impact of the proposed variances he advised there will be more trucks across from him now that the bus barn building is gone, more garbage and dirt will be created and the lot is an eyesore.

Mr. Kowal, representing the City of Edmonton Sustainable Development Department provided the following responses to questions:

1. This is a Class B development involving variances for a Permitted Use.
2. He did consider hardship in his analysis when granting the variances. Hardship was present due to the temporary nature of the development. To require a huge Setback and Landscaping would require an immense amount of investment and effort as the property line is particularly long.
3. Any Landscaping would not mature by the end of the 6 year Development Permit.
4. Landscaping would require ongoing maintenance and would reduce the size of the yard which was required for the LRT project.
5. The Site was slotted for future Residential Use under the Area Redevelopment Plan and at that point Landscaping would be required.
6. The maintenance lot is a Permitted Use and he has no authority to alter what was happening on the Site.
7. He was of the opinion that the variances granted regarding the Setback would not make a significant difference to the neighbourhood, particularly in relation to noise.
8. The Setback and Landscaping variance worked together and both needed to be varied.
9. The Development Officer conceded that material would likely be stored up to the fence line including the fence on the south end of the Site which is currently outside of the property line.
10. The operations on the property will not be changing.

11. The City could place gravel or other landscaping materials in the Setback but would then later have to remove it. Since this is a temporary project under a temporary Development Permit, the Development Officer felt it made no sense to put any form of Landscaping into the Setback area.
12. It is possible to impose a time limit on the Development Permit such that there would be no extension beyond the 6 years.
13. The Development Officer felt that the additional fencing and other planned improvements would enhance the area.
14. He agreed that granting variances allowing for zero Setbacks and Landscaping is an unusual situation related to the unique nature of this site. This is not a Residential or Commercial area but a Public Utility with a temporary Development Permit.

The Board heard from Mr. Croy Yee of Croy Yee Architect Ltd., representing the Respondent, the City of Edmonton.

1. The City believes that adding a permanent fence on the north and west sides of the property as well as security lighting and cameras will close off the Site and prevent vagrants. This will be a benefit to the neighbourhood.
2. The new access points indicated on the plan should limit vehicular noise to certain areas of the Site only.
3. The Site was zoned Public Utility (PU) and used for the Cromdale bus barns for the past 50 to 60 years. The current use involves significantly fewer vehicles in and out during the day as there is no bus traffic.
4. Materials to be stored on Site are of a heavier nature and are unlikely to blow onto neighbouring properties.
5. The piles of stored material will be lower than the Height of the previous building.
6. They anticipate the Site will be used in this manner for a five year period only.
7. If they were to add a 20 foot self-imposed Setback along the interior of the fence to replace the Landscaping Setback then vehicles using the Site would be tempted to drive along the inside perimeter. He feels it is better to have storage along the perimeter of the fence so vehicles drive further away from neighbours.
8. The fence along the north side is to remain; there is a green space for a couple of feet behind that property line.
9. A fence is to be located a metre back on the west side so it will not be right against the sidewalk.
10. Landscaping would not provide any visual screening for six to ten years and the proposed use is for six years only.

The Board heard from Mr. Chris Nelson of the City of Edmonton Transit, Facilities and Right-of-way Engineering Operations, appearing on behalf of the Respondent, the City of Edmonton.

1. He agreed that garbage and security are on-going concerns. They are frequently tasked to clean up the area as the space is currently open and people regularly dump garbage there.
2. Adding the fence and other security measures such as lighting and cameras is necessary as it will add occupancy for security and visible presence for activity.

3. If the Setback is enforced he is concerned people will use this area to park vehicles and to occupy (camp) on the Setback area.
4. Lighting and security cameras have been added to maximize security while minimizing any impact to neighbouring residences.

The Board heard from Ms. L. Kowalyshyn, representing the City of Edmonton who provided the following information:

1. She provided some background on the Site. The bus garage that was on the Site was deemed unsafe and a hazard to vagrants and was therefore removed in December, 2014. Since then, the Site has become a dumping ground and safety has become a priority.
2. The LRT wishes to secure this temporary Site until they have funding for a new Site. The proposed temporary development will address the interim security concerns.
3. Noise is a separate issue that the City of Edmonton Transportation Services Department will be addressing.

Ms. Kowalyshyn and the other City representatives provided the following responses to questions:

1. Permitting storage up to the fence will provide a visual barrier and improve the situation and reduce the dumping of personal items.
2. The proposed fence will provide visual screening and mitigate some of the eyesore factor, but will have no impact on noise.
3. The west fence will be pulled one metre away from the property line to make the Site safer.
4. The Use is not changing with this development; however, activity has changed on the Site since the building was demolished. Over the past year storage has been associated with the construction of the NAIT LRT line. Going forward the Site will be used as a less intensive lay down area for the contractor to maintain the LRT line.
5. There is an 8 foot setback from the road along 117 Avenue so the turning radius for vehicles will not be affected by the proposed development. In his view permitting storage up to perimeter of the Site will have no additional impact and will not affect vehicle access and egress.
6. In their experience an open fence is safer for people on both sides of the fence. A fence with slats would lead to undesirable activity both in and outside of the development.
7. The use is temporary, changes need to be done quickly and there is very limited funding.
8. Adding landscaping is expensive and will simply have to be ripped out.

In rebuttal Mr. Regimbald made the following points:

1. The City is arguing a financial factor, not a planning reason.
2. What is being sought on the public property would not be permitted on his private property. He is required to have a Setback and cannot leave undeveloped land messy and without Landscaping for 6 years.

3. Although the City says the proposed development is an improvement, he feels it is not and believes it would make the existing eyesore worse.
4. Notices should have been mailed to a wider area because of the noise that travels through the Site and into the neighbourhood.
5. Old materials, including passenger seats, that are not utilized for the current LRT construction are being stored on the Site and are visible to the neighbourhood. He feels the lot is used as a dumping ground.
6. He reiterated his concerns that the proposed development is going to make things worse.
7. He suggested providing a security guard.
8. He prefers the fence to be a visual barrier with slats. If the current gate configuration is used it very simple for someone to gain entry by sliding under the fence. This is how vagrants currently access the Site.

Decision:

The appeal is **ALLOWED IN PART** and the decision of the Development Authority is **VARIED**. The development is **GRANTED** as approved by the Development Authority with the following Conditions:

1. Pursuant to Section 57.1(1)(b), visual screening in the form of privacy slats shall be installed throughout the northern and western chain link fence.
2. The Minor Impact Utility Service is approved as a Temporary Development for 6 years and will expire on July 31, 2021.

The following sections of the *Edmonton Zoning Bylaw* have been **VARIED**:

1. Pursuant to Section 520.4(2), the minimum required Rear Setback of 7.5 metres is reduced to 0 metres.
2. Pursuant to Section 55.4(1), the requirement that all open space shall be landscaped with trees, shrub, bed, grass, ground cover or suitable materials is waived.

Reasons for Decision:

The Board finds the following:

1. Minor Impact Utility Services is a Permitted Use in the PU Public Utility Zone under Section 520.2(2) of the *Edmonton Zoning Bylaw*.
2. Notwithstanding that the proposed development is a Permitted Use there is still an obligation to comply with General Performance Standards as per Section 520.4(5) of the *Edmonton Zoning Bylaw*.
3. While the Board understands that this is a Permitted Use, it is also directly adjacent to residential properties. This Board is bound by Section 687(3)(d)(i)(A) and (B) of the *Municipal Government Act* to determine the outcome of the appeal and whether to confirm, revoke or vary the decision of the Development Authority. The Board has determined, based on the submissions of the parties and photographic evidence, that granting the variance under Sections 520.4(1) and 520.4(3) of the *Edmonton Zoning*

Bylaw down to “0” would materially interfere with the use, enjoyment and value of neighbouring residential parcels of land. Therefore, the Board does not waive the Front and Side Setbacks required by the regulation in the *Edmonton Zoning Bylaw* for this Permitted Use.

4. The Board waives the Rear Setback in Section 530.4(2) as the property backs on to the Light Transit Rail (LRT) line and therefore waiver along this boundary would not have the same impact as on the north and west boundaries of this development.
5. The Board waives the Landscaping requirement per Section 55.4(1) due to the temporary nature of this development. The Board also recognizes a significant amount of existing concrete would have to be removed around the Site to comply with this requirement.
6. In waiving the Landscaping requirement, the Board further stipulates that pursuant to the General Performance Standards outlined in Section 57.1(1)(b) of the *Edmonton Zoning Bylaw* that the north fence and the west fence shall have privacy slats installed in the chain link fence to ensure storage areas and any other accessory storage is screened from 80 Street and 117 Avenue.
7. The Board does not accept that a chain link fence (without slats) will provide visual screening or lessen the eyesore factor associated with the proposed development.
8. The Board notes that this application is for a permit is for a Temporary Development and accordingly, it has been limited to 6 years in duration.

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 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*,
 - 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*, R.S.A. 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.

Mr. V. Laberge, Presiding Officer
Subdivision and Development Appeal Board