

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Carriage Signature Homes Inc. v Development Authority of the City of Edmonton,
2019 ABESDAB 10207

Date: December 11, 2019
Project Number: 341871269-001
File Number: SDAB-D-19-207

Between:

Carriage Signature Homes Inc.

and

The City of Edmonton, Development Authority

Board Members

Brian Gibson, Presiding Officer
Kathy Cherniawsky
Don Fleming
Alex Nagy

DECISION

[1] On November 27, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 13, 2019 for an application by Carriage Signature Homes Inc. The appeal concerned the decision of the Development Authority, issued on October 23, 2019, to refuse the following development:

**To construct exterior alterations to a Single Detached House
(Driveway extension, irregular shaped), existing without permits.**

[2] The subject property is on Plan 1425761 Blk 8 Lot 2, located at 704 – Howatt Drive SW, within the (RSL) Residential Small Lot Zone. The Hay’s Ridge Neighbourhood Area Structure Plan 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, the proposed site plan, and the refused Development Permit;
- The Development Officer's written submission; and
- The Appellant's written submission.

[4] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – Photograph displayed on a phone by the Agent for the Appellant.

Preliminary Matters

[5] 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.

[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 M. Oehm, representing the Appellant, Carriage Signature Homes Inc.

[8] The subject house was constructed in 2016 and extended driveways were allowed at that time. In 2017, the *Edmonton Zoning Bylaw* changed to only allow one driveway on a property.

[9] He could not confirm why there was no permit issued for the extended driveway.

[10] The subject house is a Single Family Dwelling.

[11] There is an attached garage on both sides of the house.

[12] There are several extended driveways in the area and upper Windermere that are similar to the existing extended driveways that were constructed during the same time.

[13] The subject house was used by the developer as a show home and was recently sold to the current property owners.

[14] Removing the extended driveway would make it difficult to access to the second attached garage.

[15] The house has existed since 2016 with no known complaints.

- [16] In his opinion, the extended driveway will not negatively impact the neighbouring property owners.
- [17] A portion of the concrete could be removed to make it two separate driveways but that would be a hardship on the property owner.
- [18] Mr. Oehm provided the following information in response to questions by the Board:
- a. He could not confirm why the two driveways were not separated but indicated that they could be separated if required.
 - b. The extended driveway is intended to access the two attached garages and will not be used for parking.
 - c. He could not confirm if there was any consultation with the neighbouring property owners. The area is still under development.
 - d. It was his understanding that the amendment to restrict the number of driveways on a property in the *Edmonton Zoning Bylaw* was done in 2017.
 - e. He only became aware of what was in the original house development permit application when he saw the Development Officer's report the day before the hearing.
 - f. He could not confirm why the builder he represents did not construct the proposed development according to the approved 2016 plot plan.
 - g. He did not know if the extended driveways in the area have permits.
 - h. He provided the Board with a photograph on his phone showing a similar driveway with two access points in upper Windermere approximately 10 minutes away by vehicle (*Exhibit A*).
 - i. The property owner would like to continue to use the driveway extension as an access to the attached garages and not for parking.
 - j. There is room in front of the house for on-street parking.
 - k. He would need to talk to the property owners if changes to the driveway needed to be done.

ii) *Position of the Development Officer, F. Hetherington*

- [19] The Development Authority did not appear at the hearing and the Board relied on Ms. Hetherington's written submission.

Decision

[20] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **REFUSED**.

Reasons for Decision

[21] The proposed development, a Driveway extension (existing without permits), is Accessory to a Permitted Use in the (RSL) Residential Small Lot Zone.

[22] The Development Officer cited three instances of non-compliance with section 54 of the *Edmonton Zoning Bylaw* in her reasons for refusal: the development has two Driveways which exceeds the maximum allowed of one; the concrete portion between the two Driveways does not lead to a Garage or a Parking Area; and, the Driveway is 17.0 meters in width which exceeds the allowed maximum of 11.0 metres.

[23] The Appellant argued that at the time of construction the *Edmonton Zoning Bylaw* allowed for the two Driveways. However, the Board notes that this is incorrect. Bylaw 15634 was enacted on September 26, 2011 and at that time section 54 was amended to add the following regulation:

1. Bylaw 12800, as amended, The Edmonton Zoning Bylaw is hereby amended by:

g. adding the following as Section 54.1(4)

4. The Front Yard of any at-grade Dwelling unit in any Residential Zone, or in the case of a corner Site, the Front Yard or the flanking Side Yard in any Residential Zone, may include a maximum of one Driveway. The area hardsurfaced for a Driveway, not including the area used as a walkway, shall have:

a. a minimum width of 3.1 m; and

b. a maximum width the shall be calculated as the product of 3.1 m multiplied by the total number of adjacent side-by-side parking spaces contained within the Garage.

c. The Driveway shall lead directly from the roadway to the required Garage or Parking Area.

[24] The Development Officer indicated the following in her written submission:

a. A Development Permit for a Single Detached House with front attached Garage and a Driveway that led directly to the Garage doors with one access onto Howatt Drive SW was approved August 26, 2016.

b. The House approval contained a specific written condition regarding the Driveway that stated “Absolutely no future driveway extension, and the Single

Detached dwelling including driveway shall be located in accordance with the stamped approved site plan.”

- c. At the time of 2016 application, the attached Garages and access were discussed. The Appellant did not want to remove the single car garage overhead door on the right side of the house and agreed it would be accessed from the main Driveway around the house.
 - d. The understanding and condition are reflected in the original stamped approved plot plan submitted by the Development Officer.
- [25] The Appellant’s agent was unaware of the circumstances in 2016. He could not explain why after the discussion and the imposition of an express condition concerning the Driveway access, the August 26, 2016 approved plans for the Driveway were not followed. No record of any other application or appeal of that approval was provided to the Board.
- [26] The Board considered that it had received no comments from surrounding neighbours either supporting or opposing the proposed development. The Appellant’s agent indicated that he was unaware of any efforts made by the Appellant to canvass the surrounding property owners. The Board accepts the evidence that this neighbourhood is under development and not all of the lots on the blockface are occupied.
- [27] The Appellant submitted a photograph of another property with a similar configuration to the existing development. The Board did not find the photograph persuasive either way for three reasons. The Board is not bound by precedent and decides each case on its merits. The home is located a ten minute drive from the subject Site based on the Appellant’s submissions. There is no evidence before the Board about the legal status of that development.
- [28] Although the houses along Howatt Drive SW typically have larger front attached Garages, all the existing approved Driveways are limited to one access from the roadway. Based on the evidence, two accesses for one property or accessing two attached front Garages is not typical for this neighbourhood or the blockface.
- [29] The parties agreed that there is one other property further down the roadway at 687 Howatt Drive SW also built with two Driveways/accesses. However, the evidence before the Board shows that all existing approved Driveways are limited to one access and there is no Development Permit on record approving this other development.
- [30] Given the 17-metre width and two access points shown in the photographic evidence, the Board finds that a substantial majority of the Front Yard has been paved. The Board agrees with the Development Authority that the landscaped area located primarily on the City-owned boulevard between the two accesses is very minimal in scale in comparison to the much larger paved area. The proposed configuration creates a large paved area in the Front Yard that does not lead directly to any of the overhead Garage doors, nor to a parking area.

- [31] The submitted aerial photographs show that there are considerably and proportionately more landscaped areas on all of the other developed properties on this block.
- [32] The Board also agrees with the Development Officer that the configuration of the Driveways with an additional Driveway access reduces the available public on-street parking for the neighbourhood.
- [33] Based on the above, it is the opinion of the Board that the proposed development will unduly interfere with the amenities of the neighbourhood, and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

CC: Michael L. Oehm Professional Corporation, Attn: M. Oehm
City of Edmonton, Development & Zoning Services, Attn: F. Hetherington / A. Wen

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under section 688 of the *Municipal Government Act*, RSA 2000, c M-26.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Sarah Stengel v Development Authority of the City of Edmonton, 2019 ABESDAB 10208

Date: December 11, 2019
Project Number: 341599337-001
File Number: SDAB-D-19-208

Between:

Sarah Stengel

and

The City of Edmonton, Development Authority

Board Members

Brian Gibson, Presiding Officer
Kathy Cherniawsky
Don Fleming
Alex Nagy

DECISION

[1] On November 27, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on November 14, 2019 for an application by Rajinder Bahra. The appeal concerned the decision of the Development Authority, issued on October 25, 2019, to approve the following development:

To operate a Major Home Based Business - (Personal Service Shop for Aesthetics services - RAJINDER BAHRA), expires OCTOBER 25, 2024.

[2] The subject property is on Plan 7722048 Blk 4 Lot 11, located at 17116 - 98 Street NW, within the (RF1) Single Detached Residential Zone.

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

- Copy of the Development Permit application and the approved Development Permit;

- The Development Officer's written submission; and
- The Appellant's written submissions and photographs.

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.

Summary of Hearing

i) Position of the Appellants, S. Stengel and C. Stengel

- [7] They are not opposed to the proposed Major Home Based Business but are concerned that the conditions are currently not being followed.
- [8] The business has been operating for some time and there has been an excess of on-street parking and traffic in the neighbourhood.
- [9] The approved permit allows for four customer visits per day and two parking spaces on the driveway, one for the property owner and one for a customer. However, they have seen several vehicles at the property at a time which does not comply with the conditions.
- [10] They spoke to the Applicant about their concerns and the Applicant indicated that they would follow up with her customers. The Appellants are concerned that the customers will not follow the instructions.
- [11] There are several young families in the area and safety is a concern for children with an excess of vehicles in the neighbourhood.
- [12] Mr. and Mrs. Stengel provided the following information in response to questions by the Board:
- a. They confirmed they have no issue with the business if the conditions are followed.
 - b. If they did not appeal the approved permit, the City would not know there were any concerns.
 - c. They spoke to their neighbours who had concerns but they did not want to attend the hearing. They have nothing in writing from their neighbours.

ii) Position of the Development Officer, M. Winget

[13] The Development Authority did not appear at the hearing and the Board relied on Mr. Winget's written submission.

iii) Position of the Applicant, R. Bahra, who was accompanied by T. Punglia

[14] They were not aware that their neighbours had concerns with the home based business.

[15] They spoke to their customers regarding parking and will continue to ensure the Appellant's concerns are addressed.

[16] They will ensure that children living in the neighbourhood are safe by requiring customers to follow the conditions of the permit that includes parking on the driveway and ensuring that there is no overlap in client visits.

[17] There was recent construction in the neighbourhood, which increased on-street parking.

[18] Ms. Punglia has two cars and when family is visiting there can be several cars on the subject site. The cars are not parked on the subject site for long.

[19] Ms. Bahra does not have any employees at the home based business.

[20] Ms. Punglia owns the property and lives at the property. Ms. Bahra lives in the basement and does not have a vehicle.

[21] There have been one to five customers per day in the past but Ms. Bahra indicated that she will follow the condition that the maximum number of clients per day does not exceed four.

[22] Now that they are fully aware of all of the Development Permit conditions, they agree that going forward they will follow all of the stated conditions of the Development Permit.

[23] Ms. Bahra started the home based business approximately four months ago, prior to applying for a development permit. She believes a complaint was received which triggered the requirement for a development permit.

iv) Rebuttal of the Appellants

[24] They agree that construction in the area has increased traffic and parking concerns.

[25] They have seen up to 13 vehicles at the subject site. They recognize the vehicles that are associated with the subject site.

[26] In their opinion, the business has been in operation longer than four months. The traffic has increased significantly in the last four months.

- [27] They have made several attempts to speak to the property owner of the subject site about their concerns and have left written messages in their mailbox.
- [28] They could not confirm if Ms. Bahra lives in the basement. They have seen Ms. Bahra dropped off in the morning and picked up in the evening at the subject site on several days.

Decision

- [29] The appeal is **DENIED** and the decision of the Development Authority is **CONFIRMED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:

Unless otherwise stated, all references to "section numbers" refer to the authority under the Edmonton Zoning Bylaw #12800, as amended.

1. The business owner must live at the site. The business use must be secondary to the residential use of the building and shall not change the residential character of the Dwelling or Accessory Building. (Section 7.3(7)).
2. There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling. (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located. (Section 75.3).
4. If non-resident employees or business partners are working on-site, the maximum number shall not exceed the number applied for with this application.
5. The number of business / client visits to the Major Home Based Business shall not exceed four visits per day.
6. Client visits must be by-appointment only and appointments shall not overlap.
7. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the character of the neighborhood.
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.

11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes. (Section 17.2).
12. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. **This Development Permit expires on December 12, 2024.**

Note:

1. This Development Permit is not a Business Licence.

Reasons for Decision

- [30] The proposed development, a Major Home Based Business (Personal Service Shop for Aesthetics services), is a Discretionary Use in the (RF1) Single Detached Residential Zone.
- [31] The Appellants indicated that their concerns were mainly regarding parking and an excess in traffic. The Applicant is aware of all of the imposed conditions and indicated that she will ensure that they are followed, in particular that clients will park on the subject Site as outlined in the imposed conditions.
- [32] The Appellant indicated that their issues relate to compliance with the stated conditions and if the Applicant follows the conditions they have no concern with the Major Home Based Business.
- [33] Based on the above, the Board finds that the proposed development with the conditions attached, is reasonably compatible with the neighbourhood.



Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

CC: R. Bahra
T. Punglia
City of Edmonton, Development & Zoning Services, Attn: M. Winget / A. Wen

Important Information for the Applicant/Appellant

1. This is not a Business Licence. A Business Licence must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, located on the 2nd Floor, Edmonton Tower, 10111 – 104 Avenue NW, Edmonton, AB T5J 0J4.

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

EDMONTON SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: Pattison Outdoor Advertising v Development Authority of the City of Edmonton, 2019 10175

Date: December 11, 2019
Project Number: 311293064-001
File Number: SDAB-D-19-175

Between:

Pattison Outdoor Advertising

and

The City of Edmonton, Development Authority

Board Members

Brian Gibson, Presiding Officer
Kathy Cherniawsky
Don Fleming
Alex Nagy

DECISION

October 10, 2019 Hearing

[1] On October 10, 2019, the Subdivision and Development Appeal Board (the “Board”) heard an appeal that was filed on September 12, 2019. The appeal concerned the decision of the Development Authority, issued on September 6, 2019, to refuse the following development:

To install one (1) Freestanding General Advertising Sign with an electronic Changeable Copy panel containing on-premises and off-premises Advertising (incl. digital and static panels 6.1 metres by 13.5 metres facing East)(Condominium Corporation 9122259).

[2] The subject property is on Condo Common Area (Plan 9122259), located at 17503C - 100 Avenue NW, within the DC2.208 Site Specific Development Control Provision. The Place La Rue Neighbourhood Area Structure Plan 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;
 - The Appellant's written submissions; and
 - A photograph from an adjacent business owner.

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.

Summary of Hearing

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

- [7] One issue of the appeal is that the Development Officer failed to follow the directions of Council in refusing this development permit application. The second issue that will be addressed is the concern of an owner of one of the condominium units in the building that his business identification sign has existed for 25 years and should remain in its present location.
- [8] The Applicant addressed one of the reasons for refusal identified by the Development Officer by commissioning a Sign Safety Assessment that was accepted by Subdivision Planning (Transportation) on July 10, 2019. The Development Officer acknowledged in the written submission provided that the revised response from Subdivision Planning was overlooked. Therefore, with the support of Transportation, reason number 5 of the refusal no longer applies.
- [9] The reasons for refusal identified by the Development Officer are based on an interpretation of *Land Use Bylaw 5996* (the "*Land Use Bylaw*").
- [10] The subject site is located in a DC2.208, Site Specific Development Control District. DC2.208.4.i states that "Signs shall be allowed in this District as provided for in Schedule 79E and in accordance with the General Development Regulations of Sections 59 to 79 inclusive of the Land Use Bylaw."

- [11] Because DC2.208 specifically references the Land Use Bylaw, section 2.7 of the *Edmonton Zoning Bylaw* (the “*Zoning Bylaw*”) applies. Section 2.7 states:

Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any specific 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 was in effect at the time of the creation of the Direct Control District or Provision.

- [12] Court of Appeal decision, *Cameron Corporation v Edmonton (Subdivision and Development Appeal Board)*, 2012 ABCA 254 was referenced. In this decision the Court of Appeal determined that the Board was correct in applying the old *Land Use Bylaw 5996*.

- [13] There is an interesting question regarding whether or not the reference in section 2.7 of the *Zoning Bylaw* is to the *Land Use Bylaw* period or is it a reference to the *Land Use Bylaw* as it existed on the day that the Direct Control Bylaw was passed. It was his opinion that the reference is to the most up-to-date *Land Use Bylaw* and there was never intent to freeze it in time.

- [14] The scope of the development permit application states:

To install (1) Freestanding General Advertising Sign with an electronic Changeable Copy panel containing on-premises and off-premises advertising (including digital and static panels 6.1 metres by 13.5 metres facing east)(Condominium Corporation 9122259).

However, this is not what Pattison Outdoor Advertising applied for. The application was changed by the Development Officer upon review and the scope of the application was changed based on their interpretation. Pattison Outdoor Advertising applied for a Minor Digital On-premises Off-premises Sign facing **west** at this location. It was his opinion that the Development Officer did not follow the directions of Council in determining the Use Class because the determined Use Class is not allowed in this zone when in fact; the proposed sign is a Permitted Use that complies with all of the development regulations of the *Land Use Bylaw*.

- [15] The Development Officer determined that the proposed sign includes a Changeable Copy panel. However, it cannot include this feature because only On-premises Signs are allowed to have Changeable Copy panels. The Development Officer misread the *Land Use Bylaw*, particularly in light of numerous Board decisions that addressed this issue.

- [16] The Direct Control zoning references Sign Schedule 79E of the *Land Use Bylaw*. DC2.208.4.i states that Signs shall be allowed in accordance with Sign Schedule 79E. Sign Schedule 79E.1 provides a list of Signs that “**shall**” be allowed subject to the Sign Regulations. The use of the word “shall” speaks to a Permitted Use. It cannot be a Permitted Use per se under the *Land Use Bylaw* because signs were not a Use of land. Section 79E.1(c) and (f) list Freestanding, On-premises Business Identification Signs and Freestanding General Advertising Signs as allowable signs.

- [17] The elevation drawing included at Tab 6 has been revised to correct measurements that were provided on the drawing that was submitted with the development permit application. The proposed sign includes a 10 by 20 feet digital screen, which is the Freestanding General Advertising Sign. The sign will include a capper to identify the shopping centre and two static panels at the bottom which will contain tenant identification for this small shopping centre. The Condominium Association welcomes the additional advertising for their tenants as well as the additional revenue.
- [18] The Sign definitions contained in the *Land Use Bylaw* were referenced. Specifically section 9.2(16) which defines a General Advertising Sign as:
- A sign which directs attention to a business, activity, product, service or entertainment which cannot be considered as the principal products sold nor a principal business, activity, entertainment or service provided on the premises where the sign is displayed and general advertising has a similar meaning. Typical General Advertising Signs include Billboards and Junior Panels as defined in this Bylaw.
- [19] The proposed 10 feet by 20 feet digital panel constitutes a General Advertising Sign pursuant to the definition contained in the *Land Use Bylaw*.
- [20] Section 9.2(6) of the *Land Use Bylaw* defines a Business Identification Sign as “a sign identifying the name, dealer, franchise association, primary function, product or service of the commercial activity conducted on the premises, and may include local advertising and changeable copy”.
- [21] The proposed additional panels on the top and bottom of the sign that will identify the shopping centre and the tenants constitute Business Identification Signs. The proposed panels will not contain any Changeable Copy.
- [22] Section 9.2(8) of the *Land Use Bylaw* defines a Changeable Copy Sign as:
- A permanent **On-premises Sign** *[emphasis added]* or portion of such a sign on which copy can be readily changed manually through the utilization of attachable characters, or automatically through the electronic switching of lamp banks or illuminated tubes. Changeable Copy Signs include mechanically controlled time and temperature displays.
- [23] The Development Officer erred by classifying the centre panel of the proposed sign as Changeable Copy. Changeable Copy can only appear on an On-premises Sign. The proposed sign contains third party advertising. Therefore, based on the definitions contained in the *Land Use Bylaw*, the proposed sign is a General Advertising Sign.
- [24] Section 79.7, the General Regulations for On-premises Signs was referenced, specifically section 79.7(3), the regulations for Changeable Copy Signs which only apply to On-premises Signs, the only signs that can be Changeable Copy Signs.

- [25] The Development Officer refused the application because Minor Digital On-premises Off-premises Signs are not allowed in the DC2.208 Zone and because it was determined to be a General Advertising Sign with an electronic Changeable Copy panel. However, the proposed sign contains Digital Copy, not Changeable Copy.
- [26] The second reason for refusal was that the proposed sign did not comply with section 79.8(1)(a) of the *Land Use Bylaw* which states that “General Advertising Signs shall be purposely designed to display painted bulletins, poster panels or vinyl backlite panels”. The proposed sign does contain poster panels and digital panels that interlock to produce a picture. The Board has determined through many previous appeals that this is exactly what digital signs are. The picture does not have to be painted media.
- [27] Several previous decisions of the Subdivision and Development Appeal Board regarding Digital Signs were referenced. Specifically, a decision dated November 18, 2011 (SDAB-D-11-219). In this case the Development Officer refused the application because in their opinion a Digital Sign was not allowed. However, upon appeal, the Board approved the sign and determined that the sign was a General Advertising Sign. Reason number 7 of the decision states that:
- The Board relies on the following in determining that the proposed sign is a General Advertising Sign:
- a) It is an off-premises sign which directs attention to a business activity, product or service 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(1) of the Land Use Bylaw because it displays digital poster panels; and
 - d) Nothing in the Land Use Bylaw prohibits poster panels from being comprised of a media which displays static digital images.
- [28] This development was also located in a DC Zone and the Board found that the Development Officer did not follow the directions of Council. In this case, the Board determined that the proposed sign was a General Advertising Sign; therefore, there was no need to consider the concerns of the Development Officer as to whether or not the sign satisfied the requirements for a Billboard Sign. The Board found that the definition of a Billboard Sign was permissive and did not specifically prohibit the use of visual media.
- [29] The Development Officer also referenced section 79.8(1)(e) of the *Land Use Bylaw* which requires that lighting be concealed or shielded to minimize glare. This regulation was intended to address the use of spot lights to illuminate billboard signs. However, one of the reasons for approval contained in the 2011 decision of the Board was that the technology of the sign automatically reduced glare and adjusted the brightness based on ambient light.

- [30] SDAB-D-13-070 issued on May 3, 2013 was referenced. This sign was refused for the same reasons as the proposed sign. In this case, the Board found that the proposed sign was a General Advertising Sign for the same reasons outlined in the decision for SDAB-D-11-219 dated November 18, 2011.
- [31] The Board has issued numerous decisions for digital signs over the years. Although the Board is not bound by precedent, it was his opinion that in rendering a decision relating to matters of law, including the application of definitions, the Board should strive for consistency; otherwise Applicants are left not knowing what to expect. The Board's approach to digital signs has been consistent over the years and it would be unwise to change that approach now.
- [32] SDAB-D-14-131 was referenced because of its similarity to the proposed sign. This application was for a large pylon sign located at a shopping centre. The owners applied to change the centre panel of the pylon sign to a digital third party advertising panel which made the sign a true combination sign containing an On-premises Sign and a Freestanding General Advertising Sign. During the hearing there was a long discussion regarding Changeable Copy and examples of Changeable Copy were submitted to support the opinion that Changeable Copy only applies to On-premises Signs. In this case, the Board found that the proposed sign was a Freestanding On-premises Business Identification Sign with local advertising and a digital General Advertising Sign. Therefore, the variances cited by the Development Officer to allow Changeable Copy were not required.
- [33] A decision of the Board dated July 31, 2015 (SDAB-D-15-151) was also referenced to illustrate that the Board approved the proposed Sign for the same reasons.
- [34] Section 14.3 of the *Land Use Bylaw*, Class B – Permitted Uses states “that developments included in this Class are Permitted Uses. Class B shall also include the following sign uses and development: 1) Canopy, Under canopy, Facia, Freestanding and Projecting On-premises Identification or Business Identification Signs..... 2) Facia and Freestanding General Advertising Signs....” This is how the *Land Use Bylaw* read before the end of its lifetime.
- [35] Section 14.4 of the *Land Use Bylaw* addresses Discretionary Uses. This section has been revised by Council and now reads “all major developments within Direct Control Districts except for those defined as Class D”. The Development Officer's written submission was referenced to illustrate that this section used to read that Discretionary Uses include “....all developments within Direct Control Districts except those defined as Class D”. Obviously the *Land Use Bylaw* was in conflict.
- [36] The Court of Appeal has determined that a development cannot be both a Permitted and Discretionary Use at the same time.

- [37] Council passed an amendment on June 17, 1996 to amend the *Land Use Bylaw*. A report from the Planning Department provided at that time indicated that the purpose of the amendment was to enact legislative changes to the *Land Use Bylaw* to respond to inquiries, requests and issues raised through Council.
- [38] This leaves the unanswered question regarding reference to the *Land Use Bylaw* in section 2.7 of the *Edmonton Zoning Bylaw 12800*. Is the reference to the old *Land Use Bylaw* as it was at that moment in time the Direct Control was passed or just the old *Land Use Bylaw*. It has been his experience that the reference has always been interpreted to mean the old *Land Use Bylaw* because it is most practical.
- [39] Even if the proposed development is a Discretionary Use, there is no reason to refuse the application. There has been a sign on this site for many years, even though it does not appear to have a valid development permit and the driving public is used to seeing a sign at this location.
- [40] Mr. Murphy provided the following information in response to questions from the Board:
- a) The Development Officer did not follow the directions of Council because the wrong sections of *Land Use Bylaw* were applied.
 - b) The proposed sign is a combination sign, an On-premises Sign without Changeable Copy and a General Advertising Sign.
 - c) If the sign illustrated in the photograph submitted by an adjacent property owner has a valid development permit, a large variance in radial separation distance would be required, which would make it difficult to obtain a development permit for the proposed sign.
 - d) Signs with crawler lights, time and temperature information are Changeable Copy and the Changeable Copy only comprises a portion of an On-premises Sign.
- ii) *Position of an Affected Property Owner in Opposition to the Appellant, V. Vuong:*
- [41] Mr. Vuong owns Wang Holdings which has operated from this location for more than 25 years and the sign illustrated in the photograph that he submitted existed when he purchased the property.
- [42] He questioned how the proposed sign would be allowed to be located so close to the existing sign.
- [43] The sign was taken down a few months ago in order to upgrade the lighting and make some repairs. He spoke to the Condominium Board to explain what he was doing.
- [44] Pattison Outdoor Advertising applied for their sign after the sign was taken down and removed from the site for repairs. Mr. Vuong noted that the photographs submitted with the application did not include his sign.

- [45] The proposed sign and his sign will be too close together.
- [46] He expressed concern regarding the addressing included on the notice because it was difficult to determine the exact location of the proposed sign.
- [47] Mr. Vuong provided the following information in response to questions from the Board:
- a) No one has ever asked him about a permit for his sign.
 - b) He contacted his lawyer to inquire about a permit but he could not confirm whether or not that sign had a valid development permit.
 - c) His sign existed when he purchased the property and it has not been changed in any way. He recently removed the sign in order to install upgraded lighting and make some minor repairs.
 - d) The sign has been re-installed as illustrated in the submitted photograph that was taken this morning.
 - e) The sign was included in the purchase agreement but he did not know if the sign had a valid development permit.
- [48] At this point Mr. Vuong requested an adjournment in order to seek legal counsel and conduct a search to determine whether or not the existing sign has a development permit.

iii) Rebuttal of the Appellant, J. Murphy:

- [49] It was Mr. Murphy's opinion that the existing sign does not have a valid development permit.
- [50] This sign would have required a development permit when it was originally installed 25 years ago but at that time there was no time limit placed on sign approvals.
- [51] This site has been simultaneously subdivided twice. The first subdivision was to remove a bare land condominium which is owned by Mr. Vuong. That is the only bare land condominium on this Condominium Plan. The rest of the site is comprised of common property. After the bare land condominium was created, the second subdivision created sites for Building A and Building B which have both been constructed on common property. Following this subdivision, both of the buildings were further condominiumized.
- [52] The proposed sign will be located on common property, south of Mr. Vuong's bareland condominium unit.
- [53] The Condominium Board has allowed Mr. Vuong's sign to remain on common property as long as it was not removed for any reason and there have been ongoing discussions between Mr. Vuong, the Condominium Board and the Applicant.

- [54] The Condominium Board controls the common property on this Site and has agreed to be the lessor of the proposed sign.
- [55] The only issue before the Board is whether or not the proposed Sign is compatible with the surrounding area.
- [56] However, if it is determined that Mr. Vuong's Sign has a valid development permit; the proposed Sign would not be allowed at this location.

iv) Position of the Development Officer, B. Noorman

- [57] Ms. Noorman did not attend the hearing, but provided a written submission that was considered by the Board.

Decision

- [58] That SDAB-D-19-175 be **TABLED** to November 13 or 14, 2019 at the verbal request of an affected property owner.

Reasons for Decision

- [59] This is the first postponement request and is necessary in order to allow sufficient time for an affected property owner who attended the hearing to seek legal counsel and determine whether or not the existing sign has a valid development permit.
- [60] The Appellant did not object to the postponement request.

November 14, 2019

- [61] The Subdivision and Development Appeal Board made and passed the following motion:

“That SDAB-D-19-175 be **TABLED** to November 27, 2019 at the request of Legal Counsel for the Appellant and in agreement with the affected property owner.”

Reasons for Decision

- [62] This matter was originally postponed to November 13 or 14, 2019 to allow sufficient time for an affected property owner to seek legal counsel and determine whether or not the existing sign has a valid development permit. Mr. A. Melnyk has been retained as legal counsel; however he is not available on these dates.
- [63] As this matter involves a seized panel, there are limited dates available for a rescheduling. All parties, including the Appellant and the Development Officer, have agreed to have this matter heard on November 27, 2019.

November 27, 2019 Hearing

[64] On November 27, 2019, the Board made and passed the following motion:

“That SDAB-D-19-175 be raised from the table.”

[65] 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;
- The Appellant’s written submissions including documents submitted on November 27, 2019; and
- A photograph from an adjacent business owner in opposition (V. Vuong);
- An email and documents submitted on November 27, 2019 from Legal Counsel for the V. Vuong; and
- A letter of opposition from an adjacent property owner (S. Yang).

[66] The following exhibit was presented during the hearing and forms part of the record:

- Exhibit A – A Streetview photograph submitted by Legal Counsel for the Appellant.

Preliminary Matters

[67] 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.

[68] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[69] 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 J. Murphy, Legal Counsel for the Appellant, Pattison Outdoor Advertising:

[70] Mr. Vuong maintains that Pattison Outdoor Advertising cannot proceed with their sign because he believes the Bell sign has a valid permit.

[71] Mr. Murphy provided the Board with a photograph showing the Bell sign (*Exhibit A*).

[72] The City found that there is no permit for the Bell sign. Mr. Murphy did a permit search for the history of the sign and found related sign permits for Fascia Signs in the centre of the property. Two permits were found for Freestanding Signs.

- [73] The Board was provided with copies of the permits that were found for the Freestanding Signs.
- [74] Permit number 91000752 was issued February 4, 1991. The permit likely relates to the centre identification sign which is likely still in existence, but does not apply to the Bell sign.
- [75] Permit number 91006523 was issued July 18, 1991 and is more likely to be the permit related to the Bell sign. However, in his opinion, this permit is not for the Bell sign that exists.
- [76] In the 1990s when the site was first developed, the unit owned by Mr. Vuong was occupied by Petro Canada and a convenience store. Petro Canada applied for a development permit to install a Petro Canada sign.
- [77] The approved application number 91006523 shows that the sign was applied for and approved with the dimensions of 8 feet wide, 22 feet high, and 12 inches in depth.
- [78] If that is correct, something other than that sign appears on the site today, namely the Bell sign that does not have a permit. The Bell sign has different dimensions, that being 13 feet wide at the top panel, and the middle is 8 feet wide.
- [79] He was not aware of the history of the Bell sign until he received an email prior to the hearing between Mr. Vuong and Mr. Gray, the Condominium Manager.
- [80] The email indicates that at some point the Condominium Board grandfathered the Bell sign. The Bell sign is on the common condominium property.
- [81] In May 2009, a motion was passed by the Condominium Board that the usage of the Bell sign will continue to be controlled by Wang Holdings until there is a change in ownership.
- [82] In his opinion, the Bell sign would revert back to the Condominium Board if Mr. Vuong did not own the sign.
- [83] Wang Holdings received title of the property in September 1999. The Bell sign has only been in place since 1999.
- [84] The Petro Canada sign is gone and the sign that is erected in its place goes beyond the approved parameters issued in 1991 permit.
- [85] In his opinion, the Bell sign exists without a permit.
- [86] The Condominium Board or the City will have to take some enforcement action to remove the sign before the Appellant can proceed with the proposed sign.
- [87] The Board needs to determine if there is a valid permit for the Bell sign.

- [88] Mr. Murphy provided the following information in response to questions by the Board:
- a. There is no site plan for Application number 91006523 to show the location of the approved sign.
 - b. The Petro Canada station and convenience store were decommissioned when Wang Holdings took over the title to the property.
 - c. If there is a valid permit for the Bell sign, he will not proceed with the proposed development.
 - d. A permit is not required to change the sign copy. However, you need a permit for a new sign structure.

[89] Mr. Murphy reiterated that Wang Holdings erected the Bell sign subsequent to the Petro Canada sign being removed. The new sign did not follow the same parameters that were approved on the 91006523 permit. It required a development permit and no permit was obtained.

ii) Position of A. Melnyk, Legal Counsel for an Affected Property Owner, V. Vuong

[90] Mr. Melnyk referred to the email dated November 21, 2019 from the Manager of the Condominium.

[91] In his opinion, there is a valid permit for the existing sign which was previously Petro Canada and is now the Bell sign.

[92] The Condominium Board grandfathered the Bell sign.

[93] The Bell sign is situated at the same location where the Appellant wants to install a sign.

[94] If there is an issue with the sign, the City or the Condominium Board can have it removed and then the proposed application can be considered.

[95] The appeal should be dismissed or adjourned until the actual position of the Bell sign is determined.

[96] The Board would be approving a permit for a sign that is in the same location as an existing sign. While the Board may have the authority to approve the proposed sign they should not do that.

[97] Mr. Melnyk and Mr. Vuong provided the following information in response to questions by the Board:

- a. The email from the Condominium Manager indicates that the Bell sign is grandfathered in until Wang Holdings is dissolved.

- b. The Bell sign was in existence when Mr. Vuong received title of the property. The sign previously advertised “Canasia Square” and Mr. Vuong changed the copy to “Bell”.
- c. Mr. Vuong stated that there are two sign permits and one is irrelevant.
- d. The Bell sign was refurbished and the underground wiring was fixed in 2019. At that time the dimensions of the Bell sign were not altered.
- e. He could not confirm the dimensions or the footings of the original sign to the existing sign.

iii) Rebuttal of the Appellant, J. Murphy

- [98] Wang Holdings purchased the property from a numbered company and informed them that he did not want the Petro Canada station.
- [99] A centre identification sign was erected advertising “Canasia Square”.
- [100] The sign was removed and the Bell sign was installed with larger dimensions potentially on the same footings without a permit.
- [101] He could not confirm if the Canasia Square sign was installed on the same footings as the Petro Canada sign.
- [102] No permit was ever issued authorizing the sign as it exists today or as it existed when it was in existence in 1999 when Wang Holdings purchased the property. Therefore, Pattison Outdoor Advertising should be able to move forward with the proposed sign.
- [103] In his opinion, adjourning the appeal hearing is not appropriate and Bylaw Enforcement is separate from this matter.
- [104] Regardless if the Bell sign is on the same footings as the Petro Canada sign does not matter as there is no permit issued for a 13-foot wide sign.
- [105] If the proposed sign is approved, the Condominium Board will most likely contact the City and ask them to take enforcement steps.

Decision

- [106] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
1. The permit will expire on **December 11, 2024**.
 2. The proposed Sign shall comply in accordance with the approved plans submitted.

3. 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)).
4. 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)).
5. All Freestanding Signs, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and 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)).
6. The following conditions, in consultation with Subdivision Planning (Transportation department), shall apply to the proposed Sign, in accordance to Section 59.2.11:
 - a. Subdivision Planning has reviewed the Sign Safety Assessment dated Jun 10. The Sign Safety Assessment has reviewed crash history, traffic volumes, roadway speed, existing and expected driver workload, the relative complexity of the geometry and concluded that a traffic safety concern will not be anticipated with the installation of a minor digital sign at the proposed location as shown in the DS_311293064-001. Subdivision Planning accepts the conclusions of the report and therefore does not object the installation of the proposed sign.

Further, Subdivision Planning provides the following comments:

- a. That, should at any time, City Operations 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 City Operations.
- b. That the owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by City Operations within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
- c. The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way, as shown on Enclosure.

Reasons for Decision

[107] The Appellant applied for a Development Permit for a Minor Digital On/Off Premises Sign. The subject Site is a bareland condominium and the proposed Sign is to be located on the common condominium property.

[108] The subject Site is located in the DC2.208 Site Specific Development Control Provision. Therefore, this appeal is subject to section 685(4) of the *Municipal Government Act* which states:

Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

(a) ...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal 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.

[109] The Development Officer indicated in the reasons for refusal and the written report (at page 8) that she had applied the provisions of the *Land Use Bylaw 5996* as contained in the office consolidation No. 9, December 31, 1991. She listed five reasons for refusing the application.

[110] The Appellant argued that the Development Officer failed to follow the directions of Council because the first four reasons are based on misinterpretations of section 2.7 of the *Edmonton Zoning Bylaw* and of various provisions of the *Land Use Bylaw 5996*. The Appellant also noted that the fifth reason for refusal is based on a factual error.

[111] The Board first considered whether the Development Officer applied the correct version of the *Land Use Bylaw 5996* in making her decision.

[112] DC2.208.4.i states "Signs shall be allowed in this District as provided for in Schedule 79E and in accordance with the General Development Regulations of Sections 59 to 79 inclusive of the Land Use Bylaw."

[113] As DC2.208 specifically references the *Land Use Bylaw*, section 2.7 of the *Edmonton Zoning Bylaw* applies. It states:

Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any specific 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 was in effect at the time of the creation of the Direct Control District or Provision. This Section was considered in camera and the Board determined if found in the DC, the Board applied the old Land Use Bylaw 5996.

- [114] According to section 2.7, any specific reference 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 District or Provision. The Board notes that section 2.7 does not say any specific reference to a land use bylaw shall be deemed to be a reference to particular sections of the land use bylaw that were in effect at the time of creation of the Direct Control District or Provision.
- [115] In the Board's view, the intent of section 2.7 is to make it clear that Development Permit applications in Direct Control Districts created under an old land use bylaw must be evaluated pursuant to the provisions of that land use bylaw when there is an express reference in a Direct Control District to an older version of the land use bylaw. Section 2.7 is not intended to require old versions of the previous *Land Use Bylaw 5996* to be applied in Direct Control Provisions.
- [116] It would be completely unworkable for applicants, appellants, affected parties and indeed this Board, to determine which specific sections of a land use bylaw were in effect at the time of the creation of a Direct Control District. Practically, there is no official available resource to easily determine which sections were in force at a particular point in time and the matter would be even less workable if portions of the Direct Control District itself were amended over time.
- [117] Further, section 687(3) of the *Municipal Government Act* states:

687(3) In determining an appeal, the subdivision and development appeal board

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw *in effect*; [Emphasis added].

This means that the Board must evaluate this appeal according to the current provisions of the *Edmonton Zoning Bylaw* or the most recent version of *Land Use Bylaw 5996* rather than the sections of *Land Use Bylaw 5996* that were in effect when the DC2.208 was created in 1991.

- [118] The Board concludes that the Development Officer should have applied the most recent version of *Land Use Bylaw 5996*, that is the one in effect immediately before its repeal and replacement with the *Edmonton Zoning Bylaw*. The Board finds that the Development Officer failed to follow the directions of Council to the extent that she based her decision on a prior version of Bylaw 5996.
- [119] Next the Board considered the Appellant's argument that the Development Officer failed to follow the directions of Council by misinterpreting the definition of Changeable Copy Signs as well as the meaning and application of the development regulations in section 79 with respect to the digital central panel of the proposed Sign.
- [120] The Development Officer determined:

- a. The proposed development was equivalent to a Freestanding General Advertising Sign with an electronic Changeable Copy Panel;
- b. Contrary to section 79.8(1)(a), the Sign was not designed to display painted bulletins, poster panels or vinyl backlit panels.
- c. Contrary to section 79.8(1)(e), the proposed lighting for the illuminated Sign was not concealed or shielded to minimize glare; and,
- d. The definition of Changeable Copy Signs in section 9.2(4) allows for on-premises advertising. As the Changeable Copy portion of the Sign is for on premises and off premises advertising, it does not comply with section 79E.1(1)(c).
- e. In her opinion, electronically changing a message every six seconds is in keeping with electronic Changeable Copy. Signs that contain off-premises advertising are not allowed to be Changeable Copy Signs, but if the Sign did not contain digital copy, she would consider it to be a Freestanding General Advertising Sign.

[121] According to the Appellant, the correct classification of developments like the central digital panel as well as the consequential application of section 79 of the *Land Use Bylaw 5996* to digital signs are issues that have been decided on by this Board on many prior occasions. The Appellant provided four sample cases where the Board determined that digital signs are General Advertising Signs and found the Development Officer's conclusions outlined above to be both incorrect and inconsistent with the directions of Council (SDAB-D-11-219; SDAB-D-13-070; SDAB-D-14-131; SDAB-D-15-151).

[122] The Board considered that all four prior cases dealt with the same issues of the legal interpretation and that the Board has previously consistently come to conclusions contrary to the determinations made by the Development Officer in her four reasons for refusal. While the Board is not strictly bound by these precedents, it is bound by a duty to act fairly.

[123] Based on the evidence, the Board finds that the proposed Sign is comprised of more than one component similar to the Sign in SDAB-D-14-131.

[124] A portion of the proposed Sign is made up of a capper (to identify the shopping centre) and two static panels at the bottom which will contain tenant identification. This portion fits the definition of a Freestanding On-premises Business Identification Sign with Local Advertising. There is no dispute that this portion of the proposed Sign complies with the section 79 of the *Land Use Bylaw 5996*

[125] The other portion of the proposed Sign is a digital sign comprised of a central panel approximately 10 feet by 25 feet. The Board finds, consistent with the reasoning in prior cases, that this digital sign falls within the definition of General Advertising Sign under *Land Use Bylaw 5996* and also complies with section 79 for the following reasons:

- a. The digital sign is an off-premises Sign which directs attention to a business, activity, product or service which is not provided on the subject Site;
- b. There is no animation in the digital sign, it displays static images in 6-second intervals;
- c. Nothing in *Land Use Bylaw 5996* prohibits poster panels from being comprised of a media which displays static digital images;
- d. The digital sign complies with Section 79.8(1)(a) of *Land Use Bylaw 5996* because it displays digital poster panels;
- e. As the technology of the digital sign automatically adjusts its brightness based on ambient light and it is concealed or shielded to minimize glare, a variance to section 79E .8(1)(e) is not needed; and,
- f. As the Board has found that the digital sign is a General Advertising Sign, a variance to section 79E.8(1)(c) regarding Changeable Copy is not needed.

Therefore, the Board finds that the Development Officer failed to follow the directions of Council in coming to her first four stated reasons for refusal.

[126] Next the Board considered the Development Officer's fifth stated reason for refusal:

In consultation with Subdivision Planning, concerns were expressed regarding the location of the proposed sign. The proposed sign is adjacent to a pedestrian crossing on 99A Avenue and may draw the drivers' attention away from crossing pedestrians. Subdivision Planning does not support the proposed location. (Reference Section 59.2(1) and (2)).

The Development Officer in consultation with Subdivision Planning, supports the Subdivision Planning concerns regarding the pedestrian crossing, and does not support the proposed sign location.

[127] The Board notes that in her written report, the Development Officer subsequently recognized that this fifth reason should not be considered a reason for refusal as she had erroneously overlooked the revised response in support of the proposed development received from Subdivision Planning. This response is reflected in the conditions proposed by the Development Officer and agreed to by the Appellant.

[128] Having found that that the Development Officer failed to follow the directions of Council, the Board considered the merits of this application.

[129] Section DC2.208.4(f)(i) states:

Signs shall be allowed in this District as provided for in Schedule 79E and in accordance with the General Development Regulations of Sections 59 to 79 inclusive of the Land Use Bylaw.

- [130] Sign Schedule 79E.1 provides a list of Signs that “shall” be allowed subject to the Sign Regulations of this Schedule. Per sections 79E.1(c) and (f) Freestanding, On-premises Business Identification Signs and Freestanding General Advertising Signs are included in this list of allowed Signs.
- [131] For the reasons stated above the Board finds that the proposed Sign fits within the list of allowed Signs and complies with the applicable regulations in section 79. However, that does not end the matter. During the hearing, an affected party (the owner of another condominium unit on the subject Site) opposed the appeal because he had erected a Freestanding On-premises sign (the Bell Sign) in virtually the same location as the proposed Sign.
- [132] The Appellant argued that the Board should not consider the Bell Sign as it did not have a Development Permit, but also conceded that the appeal should not proceed if there was in fact an existing valid Development Permit authorizing the Bell Sign.
- [133] The Board adjourned the hearing to allow the affected party an opportunity to retain legal counsel and produce a Development Permit for the Bell Sign. The Board reconvened to hear evidence and submissions about the history of the Bell Sign and whether or not it was authorized by a valid Development Permit.
- [134] The Board considered two potential Development Permits submitted by the parties: Permit number 91006523 to install a freestanding business identification sign (Petro Canada); and, Permit number 91000752 to install a freestanding business identification sign (Canasia Square / Various Copies). The Board agrees with both parties that Permit number 91000752 was irrelevant to this appeal.
- [135] Development Permit application 91006523 “To install a freestanding business identification sign. (Petro Canada)” was approved on July 18, 1991, before the affected party purchased a unit on the subject Site.
- [136] Page 1 of Development Permit application 91006523 includes the following:
- I/We hereby make application under the provisions of the Edmonton Land Use Bylaw No. 5996, as amended, to develop in accordance with the plans submitted, which form a part of this application. I/We understand and acknowledge the conditions and limitations applying to the issuance of a development permit as stated on the reverse of this form.
- [137] No plans were submitted to the Board. The accompanying Sign Data and Information Sheet signed by the Applicant for Permit number 91006523 indicates :

DIMENSIONS OF SIGN: Width 8 feet Height 22 feet Depth 12 inches and WORDING ON SIGN: Petro Canada – Self Service – Convenience Store. The Sheet also requires submission of a Site plan identifying the location of the proposed sign and various setbacks. The file includes an illustration with some dimensions of the subject Site, but no indication of the proposed location for the requested sign.

[138] The Board considered the information about the history of the Bell Sign provided by the affected party.

- a. When the affected party purchased the property, a sign was in place with copy other than Petro Canada at the current location of the Bell Sign.
- b. In 1999, the affected party entered into an agreement to have the signage changed to Bell Canada and erected a sign at the current location of the Bell Sign.
- c. In 2019, the affected party's original Sign needed to be upgraded so it was removed, fixed, and replaced. The dimensions of the Bell Sign were not changed at the time it was upgraded in 2019.

[139] Based on the evidence submitted, the Board finds that there is no Development Permit authorizing the existing Bell Sign currently in place on the subject Site for the following reasons:

- a. An On-premises Freestanding Sign is not one of the developments for which no development permit is needed per section 12 of the *Edmonton Zoning Bylaw 12800*.
- b. Changing of the Copy on any Freestanding Sign does not require a Development Permit (Section 12.2(1)(vii) of the *Edmonton Zoning Bylaw 12800*.
- c. However, renovations or additions to developments, including Signs, which materially change its dimensions are developments which require Development Permits in their own right.
- d. Section 616(b) of the *Municipal Government Act* states:

“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.
- e. Based on the available evidence, the Bell Sign is materially larger in size, particularly in width, from the Sign approved in Permit number 91006523.
- f. The Board finds additional support for this conclusion in section 23.1(17) of the *Edmonton Zoning Bylaw* which states "Notwithstanding subsection 23.1(2), it is an offence to display a Freestanding Sign in contravention of Development Permit."
- g. Further, section 23.1(2) states:
 - If a Development Permit is required but has not been issued, or is not valid under this Bylaw, it is an offence for any person;
 - a. to construct a building or structure;
 - b. to make an addition or alteration thereto;
 - c. to commence a Use or change of intensity of Use; or
 - d. to place a Sign on land.
- h. It was also unclear from the available evidence that the Bell Sign was even erected at the location approved in Permit number 91006523. It is up to the affected party that must prove that their Sign has an authorized Development Permit.

[140] Accordingly, the Board finds that the existence of the Bell Sign is not a reason for the Board to deny the appeal.

[141] Finally, the Board considered the affected party's request that the Board either deny the appeal or adjourn the hearing pending resolution of private legal matters between themselves and the Appellants concerning who has the legal right to erect a sign at the proposed location.

[142] The Board is not persuaded that these outstanding private matters preclude it from proceeding with the hearing or allowing the appeal. The issuance of a Development Permit merely confirms compliance with the applicable zoning bylaw, it does not relieve applicants from the requirements of any other applicable legislation, caveat, covenant, easement or other legal instrument, including in this case the Condominium Property Act or the applicable condominium bylaws. In other words, an applicant may obtain a Development Permit, but for other legal reasons be unable to legally construct and install the development.

[143] For all the above reasons, the appeal is allowed and the proposed development is approved subject to the stated condition.

A handwritten signature in blue ink, appearing to read 'B. Gibson', is written over a horizontal line.

Brian Gibson, Presiding Officer
Subdivision and Development Appeal Board

c.c. V. Vuong
City of Edmonton, Development & Zoning Services, Attn: B. Noorman / H. Luke

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from Development & Zoning Services, 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 Development & Zoning Services, 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.