

Appeal No.: 0262 001 2016  
Hearing Date: 28 June 2016

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: G. MARKS  
PANEL MEMBER: K. HOWLEY  
PANEL MEMBER: C. MAH  
PANEL MEMBER: L. MULDER  
PANEL MEMBER: Z. ORDMAN

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BETWEEN:

GO OUTDOOR ADVERTISING LTD.  
represented by Rich Donadt

Appellant

and

CITY OF RED DEER  
Inspections & Licensing Department  
represented by Angie Keibel and Erin Stuart

Development Authority

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This is a decision of an Appeal to the Red Deer Subdivision and Development Appeal Board in respect to an application for a development permit for the Discretionary Use of a Billboard Sign on the lands zoned C4 located at 3401 50 Avenue (Lots 9 & 10, Block 6, Plan 3935HW). The Development Authority refused the application on the grounds that the proposed development would interfere with the amenities of the neighbourhood and the use and enjoyment of neighbouring parcels of land.

The Appeal hearing commenced on June 28, 2016, in the Council Chambers of the City of Red Deer, within the Province of Alberta.

**HEARING ATTENDEES:**

City Development Authority (Inspections & Licensing):  
Angie Keibel - Development and Licensing Supervisor  
Erin Stuart - Inspections and Licensing Manager  
Appellant/Applicant:  
Rich Donadt

**DECISION:**

The Red Deer Subdivision and Development Appeal Board allows the appeal for a development permit for the Discretionary Use of a Billboard Sign, on the lands located at 3401 50 Avenue in Red Deer, Alberta, to be issued to the Appellant. A detailed summary of the decision is provided herein.

## **JURISDICTION AND ROLE OF THE BOARD**

1. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000, c M-26 [“MGA”]. Planning and Development is addressed in Part 17 of the MGA, and further in the *Subdivision and Development Regulation*, Alta Reg 43/2002 [“SDR”].
2. The Board is established by City of Red Deer, Bylaw No. 3487/2012, *Appeal Boards Bylaw*. The duty and purpose of the Red Deer Subdivision and Development Appeal Board (“SDAB” or “the Board”) is to hear and make decisions on appeals for which it is responsible under the MGA and City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw*.

## **BACKGROUND**

3. The subject property is located at 3401 50 Avenue (Lots 9 & 10, Block 6, Plan 3935HW), Red Deer, Alberta. The subject property is located on the northeast corner of 34 street and Gaetz Avenue and is situated across from a controlled intersection including a set of traffic lights. The zoning for the subject property is C4 Commercial (Major Arterial) District.
4. On April 22, 2016, the Appellant applied for a Development Permit for the Discretionary Use of a Billboard Sign at the subject property. On June 3, 2016, the Development Authority sent a Notice of Refusal to the Applicant.
5. The Development Officer refused the application for the following three reasons, as outlined in the Notice of Refusal:
  - 1) The proposed development is not consistent with the existing signs within the immediate area with regard to scale and appearance;
  - 2) The proposed development is not deemed to be compatible with the existing surrounding developments with regard to scale and appearance; and
  - 3) The proposed development is not consistent with the intent of the Gaetz Avenue Vision: Final Report with regard to aesthetics and safety.
6. The Appellant submitted an appeal for the subject property to the SDAB on June 9, 2016. This appeal pertains to the refusal of the Billboard Sign application.

## **PRELIMINARY MATTERS**

7. The Board confirmed that no Board Member raised any conflicts of interest with regard to this application, and that neither party had any objection to the panel hearing the appeal.
8. Neither party raised any preliminary matters or concerns.
9. The Board confirmed that the main issue before them is the development permit for the Discretionary Use of a Billboard Sign, with revisions from the original plan.

10. The Board entered the following submissions into the record as Exhibits:

- Exhibit A.1 - Hearing Materials, Appeal Form, Notice of Hearing, and Notice of Refusal
- Exhibit B.1 - Submission of the Appellant, Go Outdoor Advertising Ltd.
- Exhibit C.1 - Submission of the Respondent, the City of Red Deer, Development Authority

## **POSITION of the PARTIES**

### **Development Authority Position**

11. The Development Authority, represented by Angie Keibel and Erin Stuart, outlined Exhibit C.1. The Development Authority supports that this appeal pertains to the application and subsequent refusal of development permit DP075400.
12. The Development Authority confirmed that the subject area is located at 3401 50 Avenue of the City of Red Deer, and is zoned C4 Commercial (Major Arterial) District.
13. The Development Authority presented three factors the SDAB should consider in regards to the appeal and are as follows:
  - 1) Billboard Sign restrictions in the Land Use Bylaw:
    - i. The Development Authority recognizes that the proposed development conforms with the use prescribed for the land (*Land Use Bylaw, s 2.7(i)*).
    - ii. The Development Authority stated that the dimensions of the proposed development follow the Land Use Bylaw, and that it conforms to the permitted size and area, as well as distance in grade and property line.
    - iii. Should this application be approved by the Board, no variance or relaxation is required for this size of Billboard Sign.
  - 2) Whether the Billboard Sign should be approved as a discretionary use
    - i. The Development Authority stated that a Development Officer can approve a discretionary use where it conforms with the prescribed use, and where it would not unduly interfere with the amenities of the neighborhood or affect the use, enjoyment, or value or neighbouring parcels of land. In this case, the Development Officer found that the proposed development is not consistent with existing surrounding developments or signs in regards to scale and appearance.
    - ii. Neighbouring businesses have identification signs, whereas the proposed sign is a 3<sup>rd</sup> party advertising Billboard Sign. As well, the neighbouring identification signs are much smaller in size than the proposed Billboard Sign. The Development Authority submits this would be inconsistent in appearance with the surrounding businesses.

3) Gaetz Avenue Vision Study

- i. The Development Authority finds that the proposed Billboard Sign does not block view of the traffic signal. However, the Billboard Sign is located in field of view near or past the traffic signal, and that it is located in field of view near the intersection of 34 Street and Gaetz Avenue.
- ii. The Development Authority stated that the Gaetz Avenue Vision Study was created in 2013. There was a substantial amount of public, stakeholder, and City Council consultation done at the time. The Study recommends focus on creating unique and vibrant layers of improvement to the visual experience for all users of the corridor. The Study also states that signs shall not obscure a driver decision point.

14. The Development Authority submitted that the Board should consider two reasons for refusal of the proposed Development:

- 1) Safety: the Billboard Sign could be distracting at the intersection of 34 Street and Gaetz Avenue; and
- 2) Sign Proliferation: the proposed Billboard Sign would add visual clutter, and undermine the effectiveness of nearby identification signs.

15. In summary, the Development Authority submitted that the SDAB consider the two items listed below, and recommended refusal of the proposed Billboard Sign on the basis that:

- 1) The Billboard Sign is not consistent with existing signs in surrounding developments; and
- 2) The site is within view and sightline of the intersection and traffic signal, which opposes the planning considerations regarding safety and visual clutter.

The Development Authority did not present any conditions to the Board should the Board decide to allow the proposed Development.

**Appellant Position**

16. The Appellant, represented by Rich Donadt of Go Outdoor Advertising Ltd, spoke to Exhibit B.1.

17. The Appellant confirmed that the subject property is zoned C4, and that, according to the Land Use Bylaw, Billboard Signs are allowed as discretionary items if they meet the relevant criteria.

18. The Appellant submitted that all requirements found in *Land Use Bylaw* s 3.4 (4)(a) are met. He described all five requirements, and confirmed that no variances on the requirements are needed. These five requirements are outlined on page 2 of Exhibit C.1, point #12.

19. The Appellant addressed all three reasons the Development Authority provided for refusal of the proposed development:

- 1) The first reason the Development Authority provided is that the proposed development is not consistent with existing signs in the area in respect to scale and appearance.
  - i. The Appellant stated that the proposed Billboard Sign meets all requirements of Billboard Signs. He referred to examples of existing signage on page 1 of Exhibit B.1. These pictures of other signs in the immediate area are similar to the proposed development. He stated that the proposed Billboard Sign is consistent in size and appearance in comparison to other signs in the area.
- 2) The second reason the Development Authority provided is that the proposed development is not compatible with existing surrounding developments in scale and appearance.
  - i. The Appellant stated that the proposed Billboard Sign does meet requirements of the Bylaw, which is specific as to requirements and criteria. He believes that the Development Authority's reasoning on this point is opinion. The Bylaw does not refer to architectural designs of buildings or developments in C4 districts, or Billboard Signs in respect to surrounding developments. The Bylaw provides specific restrictions to Billboard Sign developments.
  - ii. The Appellant referred to pages 2-4 in Exhibit B.1. The document displays examples of signs in the immediate area (within 200 meters) of the proposed sign. The Appellant stated that these photos provide context to the "commercial" look of the area. In these photos, a current Billboard Sign was included that is larger in height and length than the Appellant's proposed development.
- 3) The third reason the Development Authority provided is that the proposed development is not consistent with the Gaetz Avenue Vision Study.
  - i. The Appellant stated that this Study was not presented to him for consideration when the Appellant was making its application. The Gaetz Avenue Vision Study is not required by the Bylaw, and does not provide grounds to refuse a development permit.
  - ii. The Appellant stated that very few studies say that Billboard Signs are not safe, and that there is no evidence that Billboard Signs are unsafe. He believes it is unfair for the Development Authority to say otherwise with unsubstantiated comments.

20. The Appellant referred to page 5 in Exhibit B.1, a list of businesses within 200 meters of the proposed development site that were contacted and informed of the proposed Billboard Sign, none of which opposed the proposal.
21. The Appellant referred to pages 6-7 in Exhibit B.1, which showed examples of other Billboard Signs within the municipal boundaries of Red Deer, found in the C4 and I1 zones. These Billboard Signs have been allowed for Pattison Outdoor by the Development Authority. These Billboard Signs are allowed as discretionary items in the City, and have been granted permits. He stated that this is prejudicial and unfair, and that the proposed development should be afforded the same opportunity.
22. The Appellant discussed how sign proliferation is unwanted by advertisers, as it brings down the value of the locations. Bylaws allow municipalities to restrict and control specific zones, which reduces sign proliferation.
23. The Appellant referred to a picture provided by Inspections and Licensing (found in Exhibit C.1 page 8). He explained that the picture appears to be taken from the west. The edge of the proposed Billboard Sign would only be visible from the traffic lights. The Billboard Sign is past the service road, and then three meters or more into the property. It is impossible for the sign to block out the traffic signal. The traffic signal is viewed from the south, not the west. The Appellant states that there would be zero interference with the signal.
24. In summary, the Appellant states that the proposed Billboard Sign meets all requirements of the Bylaw for Billboard Signs, and is consistent with the area and surroundings, and compatible with other signs. As well, the City has already set a precedent by approving Billboard Signs in the C4 districts. For these reasons, it is appropriate for the Board to approve the proposed development.

The Appellant did not present any conditions to the Board should the Board decide to allow the proposed Development.

There are no residents or neighbouring businesses that oppose the proposed development.

## **ISSUES AND BOARD FINDINGS**

25. The Board finds that the Billboard Sign meets all the criteria stated in the Land Use Bylaw, as per Billboard Sign Restrictions in the Land Use Bylaw s 3.4(4)(a).
26. The Board accepts that there is no distance requirement between a Billboard Sign and a freestanding sign.
27. The Board finds that the definition of "Billboard" in Land Use Bylaw s 3 includes third-party advertising.
28. The Board finds that the proposed development would not interfere with the amenities of the neighbourhood or value of neighbouring parcels of land.

29. The Board finds that the Billboard Sign is compatible with the neighbourhood and is consistent in nature to other signs in the area.
30. Having reviewed the relevant sections of the Gaetz Avenue Vision Study, the Board notes that this is a document that could be considered by the Development Authority in making a decision on an application for a discretionary use but finds that the proposed development is consistent with the signage criteria outlined in Exhibit C.1, page 25, point 2.
31. The Board is satisfied that there is no safety issue with the proposed development, and that there was not substantial information provided to confirm a safety issue.
32. The Board accepts the Appellants submission that the field of view is not a safety issue.
33. The Board further finds that that there is no safety, sign proliferation, or traffic light issues in regards to the proposed development.
34. The Board is not convinced that there is a sightline issue and was not substantiated by the Development Authority.
35. The Board notes and accepts that the Appellant went beyond the requirements of the Land Use Bylaw in contacting neighbouring businesses in regards to the proposed development. The Board accepts that the neighbouring businesses did not object to the proposed development.

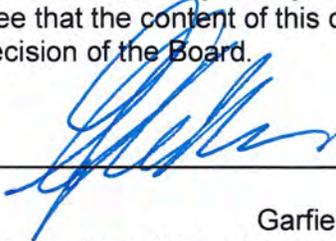
For the reasons provided above, the Board allows the appeal.

**DECISION SUMMARY:**

The Red Deer Subdivision and Development Appeal Board allows the appeal, for a development permit for a Discretionary use a Billboard Sign, on the lands located at 3401-50 Avenue in Red Deer, Alberta, to be issued to the Appellant.

**CLOSING:**

Dated at the City of Red Deer, in the Province of Alberta, this 13<sup>th</sup> day of July, 2016 and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.

  
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Garfield Marks, Chair  
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, you must follow the procedure found in section 688 of the *Municipal Government Act*, which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

## APPENDIX A

Documents presented at the Hearing and considered by the Board.

### EXHIBIT LIST

- A.1 Hearing Materials with Agenda, Appeal Form, Notices of Hearing and Notice of Refusal from Development Authority to Appellant  
(Pages 1-7)
- B.1 Appellant Submissions  
(Pages 1-7)
- C.1 Development Authority Submissions  
(Pages 1-34)