

Appeal No.: 0262 001 2013
Hearing Held: 29 January 2013

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: B. FARR
PANEL MEMBER G. LEASAK
PANEL MEMBER P. MCGREGOR
PANEL MEMBER L. MULDER
PANEL MEMBER Z. ORDMAN

BETWEEN:

LIBERTEVISION WEST (O/B TOM BAST SPORTS)
Represented by G. Aucoin

Appellant

and

CITY OF RED DEER
MUNICIPAL PLANNING COMMISSION
Represented by B. Glass & V. Swainson

Development Authority

DECISION:

MOVED by G. Leasak, seconded by P. McGregor:

RESOLVED that the Subdivision and Development Appeal Board having heard all of the parties who wished to speak both in favour and against the appeal filed by Libertelevision West regarding the January 09, 2013 decision of the Municipal Planning Commission that denied the application for the discretionary use of a dynamic sign located at 6013 48 Avenue (Lot 11; Block 9, Plan 012-3513) hereby REVERSES the decision of the Municipal Planning Commission and allows the appeal. The development is approved.

CARRIED

BACKGROUND:

1. The Appellant is proposing to install an 8' X 4'9" (3.53 m2) dynamic sign on the front of the building located at 6013 48 Avenue (Lot 11, Block 9, Plan 012-3513). This is the current location of the business known as Tom Bast Sports.

2. Gaetz Avenue is a major arterial road that runs north-south across the City. In this particular area, Gaetz Avenue is split into two distinct roads, with 49th Avenue running north and Gaetz Avenue running south. The subject property faces toward 49th Avenue and Gaetz (50th).
3. The property is located in the Riverside Industrial area which is zoned as light industrial (I1). Dynamic signs are a discretionary use in this district. The proposed sign meets the provisions found in s. 3.4 of *The City of Red Deer Land Use Bylaw #3357/2006* as amm. (the 'LUB') relating to dynamic signs. This is not in dispute by either Party.
4. The Municipal Planning Commission (the 'MPC') denied the proposed sign for the following reasons:
 1. *Although the site of the proposed sign is zoned I1, it is located in close proximity to the major arterial road system of 49th Avenue and 50th Avenue and would be highly visible from Gaetz Avenue.*
 2. *Adding a dynamic sign at this location may conflict with both the long-term vision of the area, which will be identified in the Gaetz Avenue Vision Study, and the short-term plan for the area, which may include the planting of Centennial trees nearby. Until such time that the Vision for Gaetz Avenue is completed and approved by Council, approval of a dynamic sign visible from major arterials would be in conflict with the policy direction set by City Council in their resolution of July 26, 2010, which limited dynamic signs along major arterial roads to three sites.*
 3. *Further, a dynamic sign in this location has the potential to reduce traffic safety and the overall aesthetics along what is a major arterial road in the City.*
5. The Appellant has appealed the decision of the Municipal Planning Commission to this Board.

ISSUES / ARGUMENTS:

VISION FOR GAETZ AVENUE CORRIDOR

Development Authority:

6. A study for the future vision of the Gaetz Avenue corridor began in 2010. On July 26, 2010 City Council passed an amendment to the LUB restricting dynamic signs on the Gaetz Avenue corridor to three existing locations.
7. It is the Development Authority's position that the passing of a LUB amendment restricting dynamic signs on the Gaetz Avenue corridor (see Exhibit pp. 47 & 48) demonstrates Council's desire to regulate dynamic signs on Gaetz Avenue.

Appellant:

8. The Appellant argued that there is no anticipated completion date for the study.

Board:

9. The Board does not agree that the study is a valid argument on which to deny this application for three reasons – first, the Board was provided with a copy of the LUB amendment (Exhibit A pp 47 & 48) that was passed in contemplation of the study. The amendment applies only to three specific properties located on Gaetz Avenue and 49th Avenue; not 48th Avenue. The Board was not given any evidence that the study will encompass 48th Avenue where the subject property is located.
10. Second, the Board is concerned with the application of existing bylaws. While there may be some instances where the Board may be compelled to consider a completed study on which bylaw amendments are pending, this is not the case for this application. It is not fair to deny an application based a study with unknown outcomes.
11. And third, while the Board believes that the action taken by Council to restrict dynamic signs on Gaetz Avenue demonstrates a clear intention to safeguard Gaetz Avenue against further dynamic signs, the Board finds that this is not the intent for the II district in which dynamic signs remain discretionary. By allowing dynamic signs to remain discretionary; as opposed to prohibiting them entirely; the Board believes that the intent is to allow dynamic signs when it is appropriate to do so.

PROXIMITY TO GAETZ AVENUE

Development Authority:

12. The denial of the application was in part due to the close proximity of the subject property to Gaetz Avenue, a major arterial road. Due to this, the property (and proposed sign) is *visible* from Gaetz Avenue. The MPC determined that because the property can be seen from Gaetz Avenue it conflicts with the policy direction of Council (the Gaetz Avenue study and restriction of further dynamic signs on Gaetz Avenue).

Appellant:

13. The Appellant argued that the proposed sign meets all of the LUB requirements and referred to several other Cities in Alberta where dynamic signage is permitted.
14. The Appellant also argued that the proposed sign is intended to target 49th Avenue (going north), not Gaetz Avenue (going south). In support of this, the Appellant spoke about the size and placement of the proposed sign on the building.

Board:

15. The Board has already addressed its findings relative to the policy direction of Council. In the absence of an actual adopted policy document or other supporting information, the issue of policy direction does not require further analysis.
16. However, the question of whether or not the proposed sign is appropriate for this location does need to be examined.
17. For the purposes of analysis, it is important to note that the distance from the subject property to 49th Avenue (north) is 40 meters and the distance to Gaetz Avenue (south) is 150 meters. The approximate 100 meter distance that divides the two roads is comprised of a large hill with several

stands of trees. The hill would effectively block the view of the proposed sign from Gaetz Avenue (south) traffic and as a result, the Board does not need to be concerned with Gaetz Avenue (south).

18. In 2005 the subject property received approval for a 37.05 m² fascia sign. Section 3.4(14)(h)(iv) of the LUB provides that dynamic signs may not comprise more than 25% of the total fascia sign area. The proposed 3.53 m² sign is 8.7% of the existing fascia sign. This is well below the maximum size allowable and will lessen any potential impact that the proposed sign has.
19. Based on photographs submitted (Exhibit A, p. 36), the subject property appears to be approximately 18' 6" in height and the proposed sign is 4' 9" in height. This prevents the proposed sign from dominating the building front and causes it to be proportionate with the existing structure.
20. For these reasons, the Board finds the proposed sign to be appropriate for this location.

TRAFFIC SAFETY & AESTHETICS

Development Authority:

21. In its decision, the Development authority concluded that the proposed sign has the potential to reduce traffic safety and the overall aesthetics along what is a major arterial road in the City.
22. Also of concern was that the proposed sign may interfere with the planting of centennial trees planned for the green space between 48th Avenue and 49th Avenue.

Appellant:

23. The Appellant re-iterated that many other Cities allow dynamic signs and do not have traffic safety issues. The Appellant questioned how the impact of a dynamic sign would be different than that of a 'wrapped' transit bus.
24. The Appellant argued that the sign is aesthetically pleasing and spoke to the capability of the sign owner to control the brightness and frequency of the message changing.

Board:

25. The Board was not presented with evidence to support or refute the conclusions of the MPC with regards to traffic safety. The Board finds that the ability to customize the brightness and frequency of message changes will mitigate any potential impact on traffic safety. Further, because the proposed sign is not the primary sign for the building, it is by nature smaller and this supports the notion that it will not unduly impact traffic safety.
26. The Board was not given information with respect to the planned centennial trees (exact location, number etc), and at the hearing, the Development Authority conceded that the planting of centennial trees may not be relevant to this application.
27. It is not clear to the Board as to how the proposed sign would reduce the overall aesthetics of the Gaetz Avenue corridor or have an impact on the planting of centennial trees. The proposed sign works well with the existing building and if anything, the Board believes that the planting of centennial trees would screen the proposed sign from traffic on 49th Avenue (north).

CLOSING:

For the reasons detailed above, this appeal is allowed and the development is approved.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision 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.

Dated at the City of Red Deer, in the Province of Alberta this 11th day of February, 2013 and signed by the Chair on behalf of all four panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



Bill Farr, Chair
Subdivision & Development Appeal Board

EXHIBIT LIST

Exhibit A.....Hearing Materials Package 1.B.1 & 1.B.2 pages 31-48