

Appeal No.: SDAB 0262 001 2023

Hearing Date: March 17, 2023

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

PRESIDING OFFICER: Don Wielinga

PANEL MEMBER: Michael Kartusch

PANEL MEMBER: Richard Boerger

BETWEEN:

National Neon Displays Ltd.
Represented by Terry Dunn and Garrick Wiebe

Appellants

and

CITY OF RED DEER
Represented by Sam Love, Development Officer
and Darren Sceviour, Inspections and Licensing Manager

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board revokes the decision of the Development Authority's decision of January 31, 2023. The Development Authority refused the Development Permit by the Appellant for a Dynamic Freestanding Sign on the land located at 3433 50 Avenue 9 (Lot C; Block 6; Plan 7094 K.S. Red Deer, Alberta). Therefore, the application is approved with conditions.

Approval is subject to the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of the Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any revisions to the Approval Plans must be approved by the Development Authority.

3. The Applicant shall repair or reinstate, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting, or any other property owned by the City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that the City undertakes the repairs, the Appellant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.
4. The digital sign is not to display any motion video, movies or scrolled text.
5. The digital sign must not increase the light levels by more than 0.3 fc above the ambient light level.
6. Sequential messaging is not permitted.
7. All content shown must be static and remain in place for a minimum of 20 seconds before switching to the next content.
8. Transition between content must not exceed one second.
9. No visual effects, including but not limited to: action, motion, fading in or out, dissolving, blinking, flashing, or the illusion of such effects.
10. The east side of the digital sign must include a shield for light blockage during the night hours.
11. The digital sign shall not be illuminated between from the hours of 8:00 PM to 7:00 AM.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, R.S.A. 2000, c. M-26 as amended (the MGA). Planning and Development are addressed in Part 17 of the MGA, and also in the *Subdivision and Development Regulation*, Alberta Regulation 43/2002 as amended (the SDR).
2. The Board is established by The City of Red Deer, Bylaw No. 3680/2022, "*The Red Deer Tribunals Bylaw*" (April 11, 2022). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.

4. The Appeal was heard on the 17th day of March 2023 via Video Conference in the City of Red Deer, Alberta.
5. There were no preliminary issues for the Board to decide.

BACKGROUND

6. A Development Permit Application was submitted by National Neon (the Appellant) for a Dynamic Freestanding Sign on the land located at 3433-50 Avenue, legally described as Lot C; Block 6; Plan 7094 K.S. Red Deer, Alberta.
7. On January 31, 2023, the Development Authority refused the application (exhibit B.1, pg. 7) on the grounds that the proposed development did not comply with the LUB as follows:
 - A. Section 11.8.2, of the LUB prohibits a Dynamic Freestanding Sign from being located within 100m of a Residential District and Section 11.4.3 of the LUB allows the Municipal Planning Commission to grant a variance of up to 30% (30m). This application would require a variance of approximately 40% and Section 11.4.3 of the LUB prohibits the Development Authority from granting a variance in excess of 30%
 - B. Section 11.11.3, of the Land Use Bylaw prescribes a minimum distance of 100m between a Dynamic Freestanding Sign and a Freestanding Sign. The location of the proposed sign would not comply with this regulation as it would be located approximately 80m away from a Freestanding Sign on the property located at 3421-50 Avenue. Section 11.11.3 of the LUB prohibits a Dynamic Freestanding Sign from being located within 100m of another Freestanding Sign. A variance can be granted for this, and this was not part of the reason for the refusal.
 - C. The proposed Dynamic Freestanding sign is to be located approximately 171m away from another Dynamic Freestanding Sign which is located at 3608-50 Avenue. Section 11.11.3 of the LUB prohibits a Dynamic Freestanding Sign from being located within 300m of another Dynamic Freestanding Sign from being located within 300m of another Dynamic Freestanding Sign. A variance can be granted for this, and this was not part of the refusal.
8. The Appellant filed an appeal of the refusal to the Board on January 31, 2023 (exhibit B.1, pg. 2).
9. The Board entered into evidence the following:

Exhibit A.1	Hearing Materials (14 pages)
Exhibit B.1	Respondent Report dated March 17, 2023 for the SDAB Hearing (35 pages)
Exhibit C.1	Appellant Submission dated March 3, 2023 (2 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

10. The Development Officer stated that the proposed sign does not comply with the LUB as per the following:

Regulation	Requirement in LUB	Proposed	Variance Required
Proximity to Residential District	s.11.8.2 – requires minimum distance of 100m between dynamic freestanding sign and a Residential District. s. 11.4.3 LUB allows: MPC to grant variance of 30%; DO to grant variance up to 10%.	60m away from Residential District	40% (40m)
Proximity to another Freestanding Sign	s. 11.11.3 – requires a minimum distance of 100m between dynamic freestanding sign and freestanding sign.	80m away from a freestanding sign	20% (20m)
Proximity to another Dynamic Freestanding Sign	s. 11.11.3 – requires minimum distance of 300m between dynamic freestanding sign and another dynamic freestanding sign.	171m away from a dynamic freestanding sign	57% (129m)

11. The proposed Dynamic Freestanding Sign is to be located approximately 80m away from another Freestanding Sign on the property located at 4321-50 Avenue. The Development Officer acknowledged a variance can be granted for this and was not part of the reason for the refusal.
12. The proposed Dynamic Freestanding Sign is to be located approximately 171m away from another Dynamic Freestanding Sign which is located at 3608-50 Avenue. The Development Officer acknowledged a variance can be granted for this and was not part of the reason for the refusal.
13. The Development Officer explained the Development Authority does not have the authority to grant a variance to allow the proposed Dynamic Freestanding Sign to be located 60m away from a Residential District, the SDAB has the authority to grant this variance if they feel that the proposed development

would not unduly interfere with the value of neighboring parcels of land, as the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

14. The Board can confirm or revoke the Development Officer's decision and grant a Development Permit if, in the opinion of the Board, the variances to Sections 11.8.2 and 11.11.3 should be granted.
15. The Development Officer conducted the same test for a variance is set out in Section 687(3)(d) of the MGA that the Board would also conduct:

"687(3) In determining an appeal,

....

(d) may make an order or decision or issue or confirm the issue of a Development Permit even though the proposed development does not comply with the Land Use Bylaw if, in its opinion:

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighborhood, or

(B) materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land, and

(C) the proposed development conforms with the use prescribed for that land or building in the land use bylaw."

16. The Development Officer explained the Dynamic Freestanding Sign that is the subject of this appeal is proposed to be higher than the building on the property which will mean that when in operation it will be more easily visible to residents in the adjacent residential district. Further stating the Applicant, plans to comply with the regulations of the LUB for the messages and brightness given the proposal to shield the digital portion of the sign from the Residential District.
17. In conclusion, if the Board were to grant the Development Permit the Development Officer put forward a recommendation of conditions for the Board to impose if approved, exhibit B.1. pg. 34.

The Appellant

When using the term "Appellant" the Board is referring to both Terry Dunn, Senior Sales Associate with National Neon Displays and Rick Wiebe, subject property owner.

18. The Board heard the Appellant's plan to make modifications to an existing freestanding sign at 3433-50 Avenue.
19. The Appellant stated that they should be permitted to increase the overall height of the existing sign to the maximum allowable height of 29.5 feet or 354 inches or 9.0 m.
20. With respect to the diagonal distance to the Royal LePage sign across 50 Avenue is considerable as it is a distance of approximately 170m. This discrepancy should not be allowed to determine what is planned on the opposite side (east) of the roadway.

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21. Further, the distance from the existing Royal LePage Dynamic sign to the Residential building behind the Royal LePage building is approximately 50m. This distance of 50m from the sign to a residential location is closer than their application whereby the sign is approximately 60m from the nearest residence.
 22. The Appellant stated the planned activity on the proposed digital board would be limited to static images and infrequent changes.
 23. In regard to the operation of the sign, during the evening digital displays will be terminated (darkened) from 8:00 pm to 7:00 am.
 24. The Appellant stated the brightness of the displays would be governed by the NIT tolerances in the bylaws.
 25. With respect to the signage displays, day and evening displays would be shielded from view from the easterly residences by a custom-formed aluminum structure on the east side of the sign.
 26. The Appellant indicated the images shown on the sign would be static and no live videos will be displayed.

FINDINGS AND REASONS

27. All applications before the Board must comply with the use prescribed for the property. In this case the lands are zoned C4, Commercial land use district where a Dynamic Freestanding Sign is a Discretionary Use.
28. The Board notes a Development Permit for a Freestanding sign was approved to be erected at 3433-50 Avenue in 1984. The Applicant filed an application for a Development Permit in 2022 to replace the Freestanding Sign that has existed since 1984 with a Dynamic Freestanding Sign.
29. The Board notes that in Section 11.5 of the LUB a Dynamic Freestanding Sign as a:

“Freestanding Sign with features that move or appear to move or change and includes any display that incorporates a technology or method allowing the image on the Copy Area to change such as rotating panels, LED lights manipulated through digital input, or digital ink. Dynamic Freestanding Signs must not display videos.”
30. The Board notes the Appellant would like to increase the overall height of the existing sign to a height of 9m and add a digital display board to replace two existing cabinets below the top-mounted Benjamin Moore sign.
31. The Board first considered the development of a Dynamic Freestanding Sign in close proximity to a residential neighborhood:

Section 11.8.2, of the LUB prohibits a Dynamic Freestanding Sign from being located within 100 of a Residential District and Section 11.4.3 of the LUB allows the Municipal Planning Commission to grant a variance of up to 30% (30m). This application would require a variance of approximately 40% and Section 11.4.3 of the LUB prohibits the Development Authority from granting a variance in excess of 30%.

32. The Board also considered the test for a variance is set out in Section 687(3)(d) of the MGA:

“687(3) In determining an appeal,

....

(d) may make an order or decision or issue or confirm the issue of a Development Permit even though the proposed development does not comply with the land Use bylaw if, in its opinion:

(ii) the proposed development would not

(A) unduly interfere with the amenities of the neighborhood, or

(B) materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land, and

(C) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

33. The Board then used the above questions in the formation of their decision.

Would the proposed development unduly interfere with the amenities of the neighborhood?

34. The Board notes this area is a C-4 Commercial Use District with a main traffic road, the sign would fit well with the commercial aspect of the area.

35. The Board reviewed the pictorial evidence within the Respondent’s report. The Board determined that the observations made by the Development Authority accurately depict the sign which will be installed.

36. The Board considered there is another similar sign at the Royal LePage building which is diagonal to the north and across the street from the requested sign.

37. The Board concludes that the proposed sign would not unduly interfere with the amenities in the neighborhood.

Would the proposed sign materially interfere with or affect the use, enjoyment, or value of neighboring parcels of land?

38. The Board noted that the light from the day and evening displays would be shielded from view from the easterly residences by a custom-formed aluminum structure on the east end of the sign. The Appellant stated in the hearing this would be similar to blinders on a racehorse.

39. The Board noted that during the night the digital displays would be terminated (darkened) from 8:00 PM to 7:00 AM.
40. The Board notes the Applicant stated the day and limited evening displays would be governed by the NIT (degree of brightness of a screen or monitor) tolerances in the bylaws.
41. The Board notes the Appellant stated the images shown on the digital display would be static only and that there would be no live videos.
42. The Board notes that residents within 100m of the proposed sign were given notice of the sign and were given the opportunity to attend or give written submissions to the Board. The Board noted that area residents did not attend the hearing nor did the Board receive written submissions.
43. The Board concludes that the proposed sign would not unduly interfere with the use, enjoyment, or value of the neighboring properties.

Would the proposed development conform with the use prescribed for that land or building in the LUB?

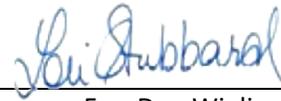
44. The Board notes the Dynamic Freestanding Sign in relation to a Residential District is prescribed to be a minimum of 100m in distance between the two. The location of the proposed sign would be located approximately 60m away from a Residential District.
45. The Board feels the proposed development conforms with the use prescribed for that land or building in LUB due to the custom-formed aluminum structure on the east end of the sign and the time the signage would be terminated (darkened).
46. Therefore, given the authority the Board has to grant this variance, the Board is justified in this decision given the reasons above.
47. The Board then reviewed the variances requested due the proximity for the proposed sign to another Dynamic Freestanding Sign and Freestanding Sign:
 - A) The proposed Dynamic Freestanding Sign is to be located approximately 80m away from another Freestanding Sign which is located at 3421-50 Avenue. Section 11.11.3 of the LUB prohibits a Dynamic Freestanding Sign from being located within 100m of another Freestanding Sign. The Development Officer stated this was not part of the reason for the refusal.
 - B) The proposed Dynamic Freestanding Sign is to be located approximately 171m away from another Dynamic Freestanding Sign which is located at 3608-50 Avenue. Section 11.11.3 of the LUB prohibits a Dynamic Freestanding Sign from being located within 300m of another Dynamic Freestanding Sign. The Development Officer stated this was not part of the reason for the refusal.

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48. Section 11.4.3(2) of the LUB provides a list of suggested planning criteria that may be used to evaluate whether or not a variance (or variances) is justified. These include but are not limited to:
- i. the size and location of the site;
 - ii. the design or construction of a Building or Sign;
 - iii. the Immediate Street Context;
 - iv. whether the proposed sign would unduly interfere with the amenities of the neighborhood; or materially interfere with or affect the use, enjoyment or value of neighboring Sites;
 - v. the heritage value of a Sign or Building;
 - vi. all applicable Council policies and guidelines;
 - vii. applicable Statutory Plans.
49. The Board found two reasons that could be used as justification for the two variances. First, the Board does not believe the proposed sign would interfere with the existing Freestanding Sign as they are different types of signs. Second, the location of an existing Dynamic Freestanding Sign to the north and across the street would not impact this development as it is across the street and diagonally to the north of the proposed sign.
50. In addition to the above reasons for the two variances, the Board notes that the Development Officer did not consider the two variances an issue. The Development Officer did not consider there would be a negative impact to the surrounding neighborhood. The Board supports the two variances and considers them acceptable.
51. In summary nothing was brought forward from the area residences to indicate issues with the Development Permit Application. The Development Officer indicated no issues with two of the variances and was not able to approve the variance on the residential property due to the amount of distance to the residential property.
52. The Development Officer indicated that if the Board is prepared to issue a Development Permit for the proposed dynamic freestanding sign, the Appellant must conform to the conditions of the Development Permit and any approved plans. The Board supports these recommendations (exhibit B.1. pg. 34).
53. The Board wishes to impose the conditions submitted by the Development Officer along with two additional conditions to ensure there is little to no impact due to the proximity the Dynamic Freestanding Sign to the Residential District; (1) The Dynamic sign must contain a custom-formed aluminum structure on the east end of the sign for light blockage and (2) the Board wishes to impose additional illumination restrictions to ensure the digital displays shall not be illuminated between from 8:00 PM to 7:00 AM.

CLOSING:

54. For these reasons, the decision of the Development Authority is revoked and the application is approved with the conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 30th day of March, 2023 and signed by the Presiding Officer on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



For: Don Wielinga, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on 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.

APPENDIX A

Exhibit A.1:	Hearing Materials	14 pages
Exhibit B.1:	Development Authority Report	35 pages
Exhibit C.1:	Appellant Submissions	2 pages