
RECORD OF DECISION

CITY OF PRINCE ALBERT DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2023-01
Hearing Date/Time: February 8, 2023 at 1:00 p.m.
Location: Main Boardroom, 2nd Floor, City Hall, City of Prince Albert

In the matter of an appeal to the City of Prince Albert, Development Appeals Board by:

Andrew Hnatuk – Pattison Outdoor Advertising

respecting the property located at:

Civic Address: 496 Marquis Road East

Legal Address: Lot 1, Block F, Plan No. 76PA10690, Extension 2

IN ATTENDANCE:

Before the Board: Martin Kiffiak, Chair
Melissa Isbister, Member
Jean-Laurent Fournier, Member
Savannah Price, Acting Secretary

Appeared for the Appellant: Andrew Hnatuk, Pattison Outdoor Advertising

Appeared for the Respondent: Craig Guidinger, Director of Planning and
Development Services, City of Prince Albert
Ellen Pearson, Planner 1, City of Prince Albert

PRELIMINARY ISSUES

The parties were advised of the procedural instructions for the hearing.

The Appellant and Respondent affirmed their testimonies would be truth prior to each being provided an opportunity to speak to the Board.

Exhibits

The following material was filed with the Secretary of the Board of Revision:

- a) Exhibit A-1 – Development Appeal Application and Supporting documentation received January 9, 2023.
- b) Exhibit A-2 – Supplementary Information from Appellant received January 31, 2023.
- c) Exhibit R-1 – Submission by Respondent received January 31, 2023.
- d) Exhibit B-1 – Statutory Declaration dated January 31, 2023, with Exhibits noted as required notices sent to the Appellant, City Council and all assessed owners of property within 75 meters of the subject property.

Exhibits were entered into the record as no objections were declared.

GROUND AND ISSUES

An appeal has been filed by Andrew Hnatuk, on behalf of the Pattison Outdoor Advertising, under Section 219(1)(b) of *The Planning and Development Act, 2007*, with respect to City Council's denial of the installation of a digital billboard at 496 Marquis Road East.

The property is located within the M3 – Large Lot Light Industrial Zoning District.

The Applicant's reason for appeal and summary of supporting facts as noted in Exhibit A-1, as follows:

"The proposed billboard placement in 9m from the curb of Marquis Road, which gives sufficient setback to avoid any risk to traffic. The intent of Section 13.3 1. b) of the Zoning Bylaw is to maintain traffic visibility and safety and with the large road right of way between the property line and the street, we feel the intent of the bylaw is met and this billboard placement should be permitted."

At the December 12, 2022 City Council meeting, an Administrative Report (RPT 22-465) was considered and the following Motion was approved:

"That the Sign Permit Application for a Digital Billboard to be located at 496 Marquis Road East, legally described as Lot 1, Block F, Plan No. 76PA10690, be denied."

The City's Zoning Bylaw No. 1 of 2019 outlines the applicable Sign regulations as follows:

13.2 Digital Sign

In addition to the regulations contained in Section 13.1 of this Bylaw, signs with digital faces or digital signs shall be administered in accordance with the following regulations:

- 1. Digital signs shall require City Council approval;*
- 2. The brightness and message speed of a digital sign shall be easily adjustable and shall be at the discretion of the Development Officer;*
- 3. Digital signs shall not broadcast live video or any type of audio;*
- 4. One (1) digital sign shall be permitted per site; and*
- 5. The City shall reserve the right to utilize a digital sign to display emergency or public safety broadcasts, or broadcast information regarding any other emergency situation where the general public may be affected.*

13.3 Billboards

1. In addition to the regulations contained in Section 13.1.2 of this Bylaw, the location of large and small billboards shall be administered in accordance with the following regulations:

- a) Billboards shall be located a minimum of 1.5 metres from any building;*
- b) Notwithstanding Section 13.1.2(b) of this Bylaw, billboards shall have a minimum front yard setback of 7.5 metres;*
- c) Billboards shall have a minimum side yard setback of 1.5 metres;*
- d) Notwithstanding Section 13.1.2(b) of this Bylaw, billboards shall have a minimum rear yard setback of 7.5 metres;*
- e) Notwithstanding Section 13.1.2(b) of this Bylaw, small billboards shall have a minimum clearance of 1.5 metres, regardless of location; and*
- f) Notwithstanding Section 13.1.2(b) of this Bylaw, large billboards shall have a minimum clearance of 3 metres, regardless of location.*

EVIDENCE AND ARGUMENT OF THE APPELLANT

The Appellant, Andrew Hnatuk, presented the evidence and argument below.

Pattison has been operating a digital billboard in Prince Albert since 2016. This digital billboard meets the highest standards with automatic dimming control, 24/7 remote monitoring, our digital billboards runs up to ten, six second advertisements with no motion or transition effects, just 10 ads. This greatly increases the amount of advertising you can get in a single footprint, which is why Pattison does digital advertisements. These billboards are utilized in the case of Amber Alerts and other timely news when warranted. Pattison is different than their competitors by running Amber Alerts because the other competitors do not run those alerts.

With increased advertising demands in Prince Albert, Pattison wants to increase their advertising offerings. 496 Marquis Road is a great location for a new digital billboard as there is ample traffic, proper zoning for billboards and more demand for advertising in the area with the new Yard development. Currently, there is a standard paper billboard at

496 Marquis Road that is behind the Tim Horton's drive-thru and Pattison wants to replace one side of the billboard to be digital and leave the other side paper. The billboard would be 9 metres tall on a single pole near the south boundary of the lot for better visibility and to avoid interfering with the Tim Horton's Parking Lot. Being closer to the boundary does not meet the required 7.5 metre setback within the Zoning Bylaw. Although the billboard would be 9 metres from the street curb, it would be 0.5 metres from the boundary and because of the large setback from the curb, this billboard would comply with the intent of the Bylaw and doesn't interfere with traffic visibility or pose any additional risks to traffic safety in the area.

Therefore, Pattison feels this variance should be granted as:

1. There is no special privilege because there are pre-existing trees in the area, a large setback from the roadway and other signage in the area, so Pattison would expect any other neighbouring lot to be able to have a billboard under the same circumstances.
2. There is more than enough setback from the roadway to meet the intent of the Zoning Bylaw and does not pose any additional risk to motorists or pedestrians.
3. This sign will have no negative impact on the neighbouring lots but should have a positive impact for business in the area.

The Board asked which direction the digital billboard would face and the Appellant responded that the digital billboard would face east and the standard paper billboard side would face west.

EVIDENCE AND ARGUMENT OF THE RESPONDENT

The Respondent, Craig Guidinger, presented the evidence and argument below.

The City is in a position where an application for a digital billboard does not meet our Zoning Bylaw. Administration, along with City Council, do not have the ability to waive those requirements up front and discussions have taken place with Pattison regarding this matter. The Zoning Bylaw has to be adhered to when it comes to applying the City's standards for a Zoning Bylaw, specifically Section 13.2 & 13.3, which regulates digital signs and billboards. The billboard itself is not what is considered discretionary, it is the digital component of it.

After an internal review, it was identified that the 7.5 metres could not be met. Our recommendation to Council back in December was to deny the application and that is the decision that Council made. Our goal and job as administration is to ensure consistency with the City's Zoning Bylaw, which is why we feel the decision by Council and our Department should be upheld.

Setback requirements do serve many purposes and in this case 7.5 metres is what would

apply. There are approximately 8 billboards along Marquis Road that all comply with the 7.5 metres.

Therefore, The City feels if this variance was to be granted, it would undermine the intent of the setback requirements within the Zoning Bylaw.

The Board asked the Appellant if he had any questions for the Respondent.

The Appellant asked the Respondent what the intent of the setback was and why the City required 7.5 metres for billboards. The Respondent indicated they do not have any specific report explaining why the 7.5 metre setback is required; however, Marquis Road has a lot of industrial businesses fronting Marquis Road and they have a setback that is quite a bit less than the 7.5 metres and the intent behind that is to afford them access to the frontage being closer to the street for passer-by's to observe advertising for the businesses.

The Appellant asked the Respondent if they believed that putting up the billboard would block any other signage within the area. The Respondent indicated that Marquis Road is unique as it does have a large buffer space and is set back quite a bit. An inventory of all the signage would need to be completed in order to determine that answer.

The Appellant asked the Respondent if the proposed sign would cause any additional site line issues for vehicular traffic in the area. The Respondent indicated that the City does have a Traffic Bylaw and that the review that was undertaken was in regards to the 7.5 metre set-back and no issues were flagged in relation to the Traffic Bylaw.

The Board clarified with the Respondent regarding if the issue was not about the sign in its current place but about the sign being moved. The Respondent indicated this was correct.

The Board asked the Respondent if there is something in the way of the current sign. The Respondent indicated that where the existing sign is currently located meets the current setback requirements within the Zoning Bylaw, which is 7.5 metres. It is the movement of the sign that will contradict the 7.5 metres.

The Board asked both the Appellant and the Respondent if there were any further questions.

The Respondent asked the Appellant to clarify why the billboard, in its current location, couldn't be switched to digital and why it needed to be moved. The Appellant indicated that when Pattison is looking to upgrade a billboard from static to digital it is a big capital investment and based on the site lines of the current property, the investment wouldn't be there. It is also far less invasive to have the billboard along the south boundary then to have in the middle of the Tim Horton's Parking Lot. Also, the current location of the billboard stands above the drive-thru at Tim Horton's so any time the paper sign needs to be changed, one lane of the drive-thru needs to be blocked off.

RULES AND STATUTES

Section 219(1)-(5) of The Planning and Development Act, 2007 governs the right of appeal, as follows:

219(1) In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:

- (a) an alleged misapplication of a zoning bylaw in the issuance of a development permit;*
- (b) a refusal to issue a development permit because it would contravene the zoning bylaw; or*
- (c) an order issued pursuant to subsection 242(4).*

(2) Notwithstanding subsection (1), there is no appeal pursuant to clause (1)(b) if a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:

- (a) is not a permitted use or a permitted intensity of use;*
- (b) is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or*
- (c) is a prohibited use.*

(3) In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.

(4) An appellant shall make the appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.

(5) Nothing in this section authorizes a person to appeal a decision of the council:

- (a) refusing to rezone the person's land; or*
- (b) rejecting an application for approval of a discretionary use.*

Section 221 of The Planning and Development Act, 2007, governs the determination of an appeal as follows:

221 In determining an appeal, the board hearing the appeal:

- (a) is bound by any official community plan in effect;*
- (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;*
- (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and*
- (d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:*

- (i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;*
- (ii) amount to a relaxation so as to defeat the intent of the zoning bylaw;*
or
- (iii) injuriously affect the neighbouring properties.*

APPLICATION/ANALYSIS

In determining the appeal, the Board was governed by Section 221 of The Planning and Development Act, 2007.

1. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district?

It is the Board's opinion that this appeal **would** grant a specific privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district. There are at least 6 existing billboard signs along Marquis Road that conform to the 7.5m setback. The zoning requirements in different jurisdictions are not relevant to the zoning bylaw in the City of Prince Albert. To allow this particular billboard would amount to a change in the municipal zoning bylaw requirement and would grant a special privilege.

2. Does the granting of this appeal amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent of the Zoning Bylaw?

It is the Board's opinion that granting of this appeal **would** defeat the intent of the Zoning Bylaw. The appellant has the opportunity to complete the desired renovations on the existing conforming billboard. Considering that the appellant operates a billboard sign already on this property, that it currently conforms to the zoning bylaw and that the appellant desires only to invest in a non-compliant billboard, this would amount to a relaxation in the bylaw.

3. Does the granting of this appeal injuriously affect the neighbouring properties?

Based on the testimony and evidence presented, it is the Board's opinion that granting this appeal would **not** negatively impact the neighbouring properties. There is no information before the board from adjacent properties that would indicate that this would negatively impact the neighbouring properties.

DECISION

That pursuant to the provisions of Section 221 of *The Planning and Development Act, 2007*, the appeal for the property located at 496 Marquis Road be denied as follows:


The appeal does not pass the first or second bar of criteria and is not granted.

DATED AT PRINCE ALBERT, SASKATCHEWAN THIS 21 DAY OF FEBRUARY, 2023.

**CITY OF PRINCE ALBERT DEVELOPMENT
APPEALS BOARD**



Martin Kiffiak, Chair



Savannah Price, Acting Secretary

TAKE NOTICE THAT, subject to Section 225 of *The Planning and Development Act, 2007*, this decision does not take effect until the expiration of 30 days from the date on which the decision was made.