

REGIONAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

UNIT B 4730 ROSS STREET
RED DEER AB T4N 1X2
403-343-3394

December 16, 2021

NOTICE OF DECISION

RE: Appeal of Development Permit 21-131 for a freestanding sign on Lot 3, Block 2, Plan 801 0541 that is located at 6110 Imperial Way within the Town of Olds

SUMMARY OF APPEAL

This is an appeal of a development permit approval for a freestanding sign. The sign was approved by the Town of Olds Municipal Planning Commission subject to the sign being located wholly on Lot 3. The Appellant/Applicant, Hans Reimert, appealed the condition requiring the sign to be completely within the boundaries of Lot 3. The reasons for the appeal include (1) visibility of the sign to the public if placed within the property, (2) increased curb appeal from a recently renovated building and proposed updated sign, and (3) view that the option of placing the sign in the property is not suitable and the preferred location is outside the property lines in the Town road allowance.

Notice of the appeal was provided to interested parties and a hearing was held on December 8, 2021.

Hearing Panel: Joe Henderson, Chair
 Heather Ryan, Board Member
 Julia King, Board Member

SDAB Clerk: Craig Teal

BACKGROUND OF THE APPLICATION

The Development Authority, being the Town of Olds Municipal Planning Commission, approved a freestanding sign (DP21-131) on October 21, 2021 on Lot 3, Block 2, Plan 801 0541. The subject property is designated I1 – Light Industrial District under the Town of Olds Land Use Bylaw. A freestanding sign is a discretionary use within this land use district. The Applicant requested approval for the sign to be located in the Town road allowance on the boulevard.

The Development Authority approved the development subject to the following conditions:

1. The development must be constructed in accordance with the approved plans and conditions. Any revisions to the approved plans must be submitted for approval to the Development Authority. The approved site plan is attached.
2. The sign shall be located wholly on Lot 3, Block 2, Plan 8010541.
3. The maximum sign area for freestanding signs is 4.5m². The face of this sign shall not exceed this size.
4. Any tree removed for the installation of this sign shall be replaced. A tree may be substituted for five shrubs.
5. The applicant shall be responsible for maintaining the sign in a proper state of repair and shall:
 - i. Ensure that all structural members and guy wires are properly attached to the sign and building and meet proper safety standards; and
 - ii. Clean all sign surfaces as it becomes necessary.
6. Where the sign no longer fulfils its function under the terms of the Town of Olds Land Use Bylaw, the applicant shall:
 - i. Remove the sign and all related structural components within thirty (30) days from the date of receipt of such notice;
 - ii. Restore the immediate area around the sign to the satisfaction of the Town of Olds Development Authority, and
 - iii. Bear all the costs related to such removal and restoration.
7. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.
8. Use and development of the subject site shall conform to all other applicable requirements of the Town of Olds Land Use Bylaw 01-23 except where a relaxation has been expressly granted.

An appeal was filed with the Regional Subdivision and Development Appeal Board on November 9, 2021 by the Applicant for DP 21-131. Affected parties were notified on November 17, 2021, with public notifications being distributed on November 17, 2021, November 23, 2021 and November 30, 2021.

MERIT HEARING

Summary of the Development Authority's Submissions

The application was for a freestanding sign which is a discretionary use in the I1 - Light Industrial District. The applicant requested approval for the sign to be located in the Town road allowance on the boulevard. The Development Officer can approve signs as a discretionary use in this District but cannot approve a variance to allow the sign in the Town road allowance. The application was presented to the Municipal Planning Commission for decision on October 21, 2021. The Municipal Planning Commission has the authority to approve a 100% variance of the requirement for a freestanding sign to be located wholly on the property to which the sign relates.

The following rationale for placing the sign in the Town road allowance was presented to the Municipal Planning Commission:

- Locating in the Town road allowance would require less removal of existing landscaping/trees;
- The proposed location of the sign did not create a conflict with any utilities as the sign would be placed where there is an existing tree; and
- The proposed location was circulated to adjacent landowners and no feedback or opposition to the placement of the sign in the Town road allowance was received.

The Municipal Planning Commission was presented two options: one to allow the sign on the Town road allowance and one to require the sign to be located on Lot 3. The Municipal Planning Commission decided to not approve a variance to allow the sign to be located beyond the boundaries of Lot 3 in the Town road allowance. The reason for not allowing a variance was to avoid creating a precedent for future sign related development permits and requests for signs to be located in the Town road allowance.

During questioning, the Development Authority clarified that if the Municipal Planning Commission had granted a variance to the Land Use Bylaw standard requiring the sign to be placed on Lot 3, then the Town would have required an encroachment agreement to allow the sign in the Town road allowance.

Summary of the Appellant/Applicants' Submissions

The Appellant/Applicant filed an appeal against condition number 2 of the development permit which does not allow the sign to be placed on the Town's boulevard. The site for the sign was chosen to be visible to the public along Imperial Way. The Appellant/Applicant walked through a series of photos that they provided and noted the following:

- The yellow location on the Town’s boulevard, is more visible than the red location on Lot 3 as shown in Figure 1 and Figure 2 (see Tab F). The power pole blocks the view of the sign.
- Figure 3 (see Tab F) marks a yellow location on Lot 3 that is not visible from the east due to fencing on the neighbour’s property.
- Figure 4 (see Tab F) shows where the old sign used to be. It was in the Town’s boulevard but was too close to the parking area so the sign was backed into and damaged by vehicles.
- Figure 5 (see Tab F) shows the building before the recent renovations. The sign and building improvements are meant to improve the view and attractiveness of the street. Figure 6 shows the renovated building appearance as a more modern looking building. The proposed sign is part of upgrading the appearance of the site to attract and keep customers in Olds.
- The sign location was checked for any conflicts with utilities. The sign needs to be placed where it can be seen.

KEY FINDINGS OF FACT

The Board makes the following key findings:

1. The proposed development is defined as a “freestanding sign” under the Town of Olds Land Use Bylaw. Signs are a discretionary use that is allowed in the I1- Light Industrial District of the Town of Olds Land Use Bylaw and the subject site is designated I1 – Light Industrial.
2. Schedule D, Section 8.0, Subsection (a) of the Town of Olds Land Use Bylaw requires a freestanding sign to be situated wholly upon the site of the building or land use to which the sign refers.
3. Part Two, Section 2.3, Subsection (4) of the Town of Olds Land Use Bylaw allows the Municipal Planning Commission to consider and approve variance requests for up to 100 percent of any standard. This includes the requirement to be situated wholly upon the site as described in Schedule D, Section 8.0, Subsection (a).
4. The Town of Olds has the ability to require an encroachment agreement before items such as the proposed sign, can be built in the Town’s road allowance. The encroachment agreement may include provisions to address the need to relocate the encroachment in response to street changes or utility changes in the road allowance in the future.
5. The location of the proposed sign is in an industrial setting with no pedestrian facilities in the Town road allowance and larger parcel frontages along the road. The proposed location of the sign on the Town’s boulevard was selected to avoid conflict with utilities.

6. The maximum sign area of 4.5m² (48ft²) has been satisfied as the lower half of the development is considered to be a “sign structure” in the form of a wall supporting the upper half of the development which is the “sign area.”

DECISION

The appeal filed by Hans Reimert is approved and the decision of the Development Authority is replaced with the following:

Discretionary Use - Freestanding Sign for Lot 3, Block 2, Plan 801 0541 with a variance to allow placement of the sign on the Town’s boulevard is APPROVED subject to the conditions outlined below:

1. The development must be constructed in accordance with the approved plans and drawings submitted with the application and the conditions outlined below. Any revisions to the approved plans or drawings must be submitted for approval to the Development Officer prior to construction of the sign. The location of the sign shall be as shown on the approved site plan that is attached subject to the sign being set back at least 1.8m from the back edge of the curb and gutter along Imperial Way.
2. Prior to construction of the sign, an encroachment agreement that allows the sign to be placed within the Town road allowance and that is satisfactory to the Town of Olds must be executed.
3. The maximum sign area for freestanding signs is 4.5m². The face of this sign shall not exceed this size.
4. Any tree removed for the installation of this sign shall be replaced. A tree may be substituted for five shrubs.
5. The applicant shall be responsible for maintaining the sign in a proper state of repair and shall:
 - i. Ensure that all structural members and guy wires are properly attached to the sign and building and meet proper safety standards; and
 - ii. Clean all sign surfaces as it becomes necessary.
6. Where the sign no longer fulfils its function under the terms of the Town of Olds Land Use Bylaw, the applicant shall:
 - iii. Remove the sign and all related structural components within thirty (30) days from the date of receipt of such notice;
 - iv. Restore the immediate area around the sign to the satisfaction of the Town of Olds Development Authority, and
 - iii. Bear all the costs related to such removal and restoration.

7. The Development Officer may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit and/or Land Use Bylaw.
8. Use and development of the subject site shall conform to all other applicable requirements of the Town of Olds Land Use Bylaw 01-23 except where a relaxation has been expressly granted.

The Development Authority is hereby instructed to issue a revised Development Permit, in the format used by the Town of Olds, outlining the Board's approval and conditions as stated above.

REASONS FOR DECISION

The Board determined that the proposed sign is an allowable discretionary use for the subject property and that the proposed sign meets the requirements of the Town of Olds Land Use Bylaw. The one standard that the sign does not meet is the requirement to place the sign within the boundaries of Lot 3 being the site of the building and use to which the sign relates. The Board is able to grant a variance to this standard subject to the conditions set out in Section 687(3)(d) of the *Municipal Government Act*. The Board may make a decision on a development permit even if it 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 neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.”

The Board notes that the subject site is located in an industrial area on a street that has a wide boulevard that does not contain pedestrian facilities. The proposed sign is a visually appealing addition in comparison to the general appearance of the properties near the subject site. In this regard, the sign is an enhancement of the amenities of the neighbourhood.

The Board considered the potential impact of placing the sign in the Town boulevard on the use and enjoyment of neighbouring properties. The proposed location of the sign in the boulevard does not prevent continued use of Imperial Way for vehicle traffic and there is no conflict with pedestrian traffic. Additionally, the proposed location of the sign is far enough removed from existing driveways and lane access points to avoid creating sightline concerns and restrict vehicle movements in comparison to the mature coniferous tree that it would replace.

The Board acknowledges that the decision on this development involves two steps. The first is whether or not the Development Authority is prepared to approve the sign in terms of its

purpose, size, dimensions and location in relation to the Land Use Bylaw and the second is whether the Town is prepared to accept the sign in its road allowance. The second part is managed by the Town using encroachment agreements and the decision to enter into an encroachment agreement and the terms of the agreement do not rest with the Development Authority. The Board is of the view that conditional approval of the sign subject to the Town agreeing to execute an encroachment agreement is an appropriate means of addressing issues relating to utility locations and future Town plans for the road allowance.

While the encroachment agreement will likely finalize the precise location of the sign in the Town's boulevard, the Board is of the view that the sign should be set back from the existing curb and gutter to maintain visibility along Imperial Way and make allowance for snow removal. To this end a condition of being at least 1.8m set in from the curb and gutter was considered appropriate by the Board.

In deciding on this development, the Board acknowledges that it is not bound by the concept of "precedent" when deciding on discretionary uses or the application of its variance powers. Each application before the Board must be addressed based on its own individual merits. Existing signs owned by others that may or may not be in the Town road allowance and past decisions regarding these other signs do not have a bearing on the decision before the Board. Similarly, this decision does not set any binding parameters for future applications that may be put before the Development Authority or the Board. The Municipal Planning Commission, like the Board, is also not bound by previous decisions nor creates precedents for future decisions.

CLOSING:

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 the date of this decision.

Dated at Ponoka County, in the Province of Alberta this 16th day of December, 2021 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



Joe Henderson, Chair

December 16, 2021
Date

APPENDIX “A”

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

<u>Name</u>	<u>Capacity</u>
Hans Reimert	Appellant/Applicant
Kyle Sloan	Development Authority

APPENDIX “B”

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<u>Reference Tab</u>	<u>Item</u>
TAB A	Notice of Appeal
TAB B	Application
TAB C	Development Permit Issued
TAB D	Information Provided by Development Authority
TAB E	Notices
TAB F	Additional Material from Appellant