

Appeal Boards Rec'd September 5, 2017  
Submitted by: D. Fraser, the applicant/appellant

**From:** [Dean Fraser](#)  
**To:** [Calgary SDAB Info](#)  
**Subject:** SDAB2017-0053, DP2017-2089 Further Submission  
**Date:** Tuesday, September 05, 2017 12:17:58 PM  
**Attachments:** [2015-0094\\_Sunridge\\_Documents\\_Outdoor\\_2015.docx](#)

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Please find attached for distribution to the Appeal Board and Maurie Lowen Calgary Subdivision and Development Appeal Board document - Case Name SDAB2015-0094 (Re) with respect to upcoming Appeal Hearing referenced above. I spoke to Maurie Lowen this morning and we discussed the new submission document.

The Appellant wishes to reference the new submission document specific to TAC guidelines only when looking at the merits specific to it's appeal and location at 2825 Sunridge Way NE.

Please note I will be bringing 12 copies of the document to Thursday's Appeal hearing as per my subsequent discussion with Gail Clark of the Calgary Subdivision & Development Appeal Board office.

Respectfully.

GO Outdoor

Dean Fraser  
587-577-4933

Calgary Subdivision and Development Appeal Board  
P.O. Box 2100, Station M, # 8110,  
Calgary, AB T2P 2M5  
Email: info@calgarysdab.ca



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**CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

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*Citation: 2015 CGYSDAB 94*

Case Name: SDAB2015-0094 (Re)

File No: DP2015-0978

Appeal by: Outfront Media Canada represented by Timothy Bardsley

Appeal against: Development Authority of The City of Calgary

Hearing date: August 13, 2015 and September 24, 2015

Decision date: October 20, 2015

Board members: Rick Grol, Chairman  
Kerry Armstrong  
Katherine Camarta  
Jeff Gilmour

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**DECISION**

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**Basis of appeal:**

This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Outfront Media Canada** for a **temporary use: sign – class F (third party advertising sign, west face) and sign – class G (digital third party advertising sign, east face)** at 330 65 Avenue SE.

**Description of Application:**

The appeal before the Subdivision and Development Appeal Board (Board) deals with a refusal by the Development Authority of a development permit application for a temporary sign – class F (third party advertising sign, west face) and sign – class G (digital third party advertising sign, east face) at 330 65 Avenue SW. The property is located in the community of Manchester Industrial and has a land use designation of Industrial – General (I-G) District.

**Adjournment:**

On August 13, 2015 the hearing commenced with considerations of procedural issues. The Board adjourned the item to September 24, 2015 with the consent of all parties.

**Hearing:**

The Board heard verbal submissions from:

Maurie Loewen, Senior Planning Technician with the Planning Development & Assessment Department of The City of Calgary, on behalf of the Development Authority;

Eric Knudtson, a Design Project Engineer with the Transportations, Roads, Department of The City of Calgary, on behalf of the Development Authority;

Shannon Belvedere, Lawyer with The City of Calgary Law Department, legal counsel for the Development Authority;

Timothy Bardsley with Dentons Canada LLP, legal counsel for Outfront Media Canada, the applicant and appellant, in favour of the appeal; and

Mark Sze, real estate manager for Outfront Media Canada for Calgary, the applicant and appellant, in favour of the appeal.

**Summary of Evidence:**

The Board report forms part of the evidence presented to the Board. It contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application.

The Board report further contains the notice of appeal and the documents, materials or written submissions of the appellant, applicant and any other party to the appeal.

*Development Authority's Submission*

The Development Authority's representative, Mr Loewen, presented exhibits including the report, power point presentation, maps, viewgraphs, relaxation table and photographs. He submitted the following [unedited]:

The proposal is for a new third party advertising signs at 330 65 Street SE. The sign is proposed to be double sided, with a static third party advertising sign, Sign - Class F, facing west, and a digital third party advertising sign, Sign - Class G, facing east. The parcel is within the Manchester Industrial Area and has the Land Use Designation of Industrial – General. Both Sign Class F and Sign Class G are listed as discretionary uses in this district.

The area to the north and to the west of the parcel developed industrial lands designated as industrial – general, To the east is the Centennial Softball Park which is designated Special Purpose – City and Region Infrastructure (S-CRI). To the South is 65 Avenue SE, then Glenmore Trail. The site is located midway between the Glenmore interchange at Blackfoot trail, and the entrance and exit ramps from Glenmore to centre street.

The parcel itself is 3868 square metres and accommodates an industrial building with a surface parking area. Access to the parcel is via 65 Avenue SE, there is no access to Glenmore Trail. Signage was previously approved in this location; however the permit has expired and therefore the signs currently exist without the benefit of a Development Permit and as such have been treated as proposed signs. The signs are proposed in the south east corner of the parcel 2 metres from 65 Avenue SE, and 1 metres from the adjacent softball park.

The signs are proposed to be a “V” shaped sign. The west facing panel is proposed to be a static third party advertising sign, the east facing panel is proposed as a digital panel. Each panel is proposed to be 6.1 metres in width and 3.05 metres in area; the total area of each being 18.6 square metres. The height is proposed at 7.62 metres from grade.

In the last five years there have been some changes to the policies and guidelines which apply to digital third party advertising signs. In 2009, as digital third party signs become more prominent, the planning department began work on various amendments to address this relatively new form of development. The primary concerns at the time being proliferation of signage and safety. In May of 2010 the use of Sign – Class G, Digital

Third Party Advertising Sign, was adopted into the Land Use Bylaw along with a set of interim rules. Meanwhile, work continued on developing new policies and processes for reviewing these signs.

In July of 2012 Council adopted the Calgary Third Party Advertising Sign Guidelines. The policies address digital and static third party signs and the process by which the Development Authority should review these signs. This included direction to circulate applications to transportation for review. In March of 2013 the Land Use Bylaw was amended to finalize the rules relating to digital third party advertising signs and implement the 2012 policy. Most recently, in 2015 the Transportation Association of Canada, TAC, adopted the Digital and Projected Advertising Displays: Regulator and Road Safety Assessment Guidelines. For the remainder of this presentation I will simply refer to this as the TAC guidelines.

In October of 2011 a sign class g and a sign class f was approved in this location. The approval was granted for a period of three years. The approval subsequently expired in October of 2014; there was no application for renewal prior to expiry, meaning the sign currently sits on the parcel without the benefit of a development permit. The 2011 signs were approved prior to the process requiring transportation review and prior to the application of TAC guidelines. This permit application was received in March of 2015; a number of months after the permit expired.

As the permit has expired, and as application to allow the signs to remain on the parcel was not received prior to the permit expiring, the Development Authority has treated this as new Signage. In reviewing this permit the Development Authority gave consideration to the Applicable Polices, as well as the Land Use Bylaw. It is true, that for the most part area around this parcel has not physically changed; however, Councils policies, and the standards by which transportation we these applications have changed. Therefore, the context itself has changed.

Council's policies regarding third party signage, and the rules they have adopted into the Land Use Bylaw are closely related. The policy is intended to guide and support the appropriate location of Third Party Signs. Similarly, the purpose statement in the Land Use Bylaw focuses on balancing the need for signs with safety and aesthetics. The policy outlines key principles, and these principles are reflected in various rules.

As part of considering Development Permit application the Development Authority will review the policy guideline and the rules to determine if the development is appropriate. There are three principles found in section 4(B) of the policy which directly apply to this sign:

Principle 2 states in part, "Third party signs must be located on private property along streets in such a way that their location mitigates or avoids risk to public safety."

Principle 3 of the policy states that "the placement of Third Party Signs on a property must satisfy appropriate minimum setbacks, other third party advertising signs. This will reduce sign proliferation and clutter."

Principle 5 states that "along a street or corridor, minimum separation distances between third party advertising signs on different properties will maintain proper visibility of all signs and avoid visual sign clutter along the streetscape including the undue concentration of third party advertising signs."

To implement the policies about clustering and proliferation, section 115.3 of the Land Use Bylaw directs that there should be no more than 2 signs facing the same direction within 225 metres of each other. There are a total of five signs within the denoted 225 metre radius including the subject sign.

This is 3 more signs than allowed, a relaxation of 150 per cent of the rule. The Development Authority did not feel granting a relaxation of this magnitude was supported by either the policy or the purpose statement within the district.

I've highlighted the approximate location of the subject sign with a red star [Mr. Loewen refers to a map in his powerpoint presentation]. The purple stars denote the four other signs within 225 metres. There are two additional signs to the east with orange stars, this are roughly 300 metres away. These do not require relaxation but are worth noting.

To implement these policies in terms of safety the rules include setbacks from roads. In this case the property line is shared with 65 Avenue SE which has a speed limit of 50 kilometres per hour. The required setback from this roadway is 6 metres, the application proposes a 2 metres setback which is a 4 metres relaxation; 67 per cent of the requirement.

It is also worth pointing out that parallel to 65 Avenue SE is Glenmore Trail, which has a posted speed of 80 kilometres per hour.

Section 4E of the policy discusses the process for reviewing development permits.

Principle 2 of this section states that applications will be circulated to the Transportation Department for review of visibility and public safety issues.

This is reflected in section 15.3, subsection 6, of the Land Use Bylaw which states that freestanding signs must be separated from the curb line or edge of an express or freeway to the satisfaction of the General Manager Transportation or their delegate.

To determine if the sign is properly separated from Glenmore Trail the file was circulated to Eric Knudtson, an engineer with Transportation Business Unit. Part of Mr Knudtson's review included application of the TAC guidelines. The Transportation Association of Canada is a not-for-profit association that provides a neutral forum to exchange ideas and information on technical guidelines and the best practices related to the Canadian transportation and roadway sectors. Just recently TAC has finalized their Guidelines for Digital and Projected Advertising Displays, The City of Calgary was a funder partner with this project in conjunction with many other municipalities and regulatory bodies across Canada.

The TAC guidelines were developed after researching countless studies and regulations throughout North America and around the world. The Engineers in the transportation business unit apply these standards to all applications for new Digital Third Party Advertising Signs. Transportation has described this area as requiring a high degree of driver attention to both east and westbound traffic. To help articulate this I will try to explain the traffic flow in this area

I have placed a star on the corner where the sign is proposed so that it is easier to spot. This area of Glenmore Trail is a divided expressway with a posted speed limit of 80 kilometres per hour. It is considered a divided roadway as there is a concrete barrier between the east and westbound lanes. Blackfoot is on the right of the screen; you can see the large clover leaf style interchange. Centre Street is harder to spot, it is on the left of the screen. The sign is located mid way between Blackfoot Trail and Centre Street.

[Mr. Loewen shows a number of slides that show aerial views of the area, sign location and Glenmore Trail SE; he extensively explains the situation of each slide show]:

Please remember, in explaining the movement of traffic we're not saying this area is unsafe. The intent is to accurately articulate that this is an area where a high degree of driver attention is required. At this point in the presentation you will note that I have made frequent reference to the 80 kilometre speed limit, this is because Mr Knudtson has informed me that in traffic engineering terms, any speed over 60 kilometres per hour is considered a high speed environment. In any high speed environment collisions are typically severe in nature.

Starting on page 31 of the appeal Board's report you will see Transportations comments. These comments specifically state: "Traffic Engineering does not support digital third part signage in areas where a high degree of driver attention is required. Roads associated with interchange, on and off ramps, merges are samples of where a higher degree of driver attention is required".

The comments continue and say: "We are also concerned with signage that is introduced in areas where there is a documented collision history or the location is adjacent to high volume roadway".

I would again like to re-iterate, this is a high speed environment, where collisions are typically severe in nature. The goal of TAC, and having Transportation review these applications, is to identify areas such as this so that we can ensure that the users of Calgary's roads get to their destinations, safely.

In summary, Council has adopted new policies and our Transportation Business unit is reviewing signs based on a more current guideline. Previous approvals were granted prior to these policies and guidelines being approved. The previous approval has since expired, these are new signs.

As these signs are new, the permit has been evaluated against the current policies and safety guidelines. The sign does not meet many of these policies, or rules, there are 5 signs in a 225 metre radius requiring a 250 per cent relaxation of the proliferation rules and a 2 metre setback from 65 Avenue requiring a 67 per cent relaxation.

Transportation has reviewed the proposal using the TAC guidelines. This area has been identified as requiring a high degree of driver attention. As such the TAC guidelines and our Transportation department are not willing to support this proposal. For the above noted neither reasons the Development Authority is not able to, nor feels there is compelling planning rationale to approve the proposed sign and consequently the application was refused.

Upon questioning of the Board, Mr. Knudtson, stated that the Roads Department has not adopted the TAC Guidelines, which are intended for all Canadian jurisdictions to use to their discretion, as a formal guideline, but this is the best guideline they have; they are not going to use anything else because they are completely satisfied with what TAC offers. The City does not have something in writing that would suggest that Administration has for 100 per cent has to follow the TAC Guidelines. Mr. Loewen advised that the Third Party advertising Guidelines is a non-statutory document, and was adopted by resolution of Council in 2012. The business practice of the Transportation department is to refer to and apply the TAC Guidelines.



Mr. Loewen pointed out that the applicant has retained their own engineers from Bunt & Associates who specifically stated that the location does not meet the TAC Guidelines. There are two engineers who agree that this location does not meet TAC, indicating there is a consistent interpretation by the professionals. He stated that the context has changed since the last application because the policy and how the Development Authority evaluates signs has changed. The decision to refuse the subject application was based, in part, on the required relaxation of the rules of the Land Use Bylaw and also on the Development Authority's discretionary power and the policy change. Mr. Loewen also referenced pages 21 and 22 of the Board report and stated that all five of the nearby signs are third party class F (static) signs. They are double sided and have been granted temporary approvals after 2011.

Mr. Knudtson stated that Appendix E of the TAC Guidelines does provide some direction on how a sign such as this should be applied at an interchange. The document does not talk about whether the sign faces oncoming traffic, or what its positioning is, or who can see it. It only speaks to the existence of it in the zone around an interchange. The TAC Guidelines only deal with digital signs. Transportation did not review the static component of the signs. Mr. Knudtson also commented that the TAC Guidelines were not available in 2011. There were no guidelines for digital signs in 2011.

Mr. Loewen indicated that the Bylaw rule for a six metre separation from the property line was in place in 2001. The development was approved originally and so this particular relaxation was not a significant issue for the Development Authority.

#### *Appellant's Submission*

The appellant in its notice of appeal submitted that the reasons for refusal do not reflect the fact that these signs have been in place for a number of years and any negative policy or Bylaw effect they may be perceived to have in theory, which is not admitted, has not proven out in practice and hence the relaxation is reasonable and warranted.

Mr. Bardsley, legal counsel for Outfront Media Canada, the appellant/applicant, presented numerous materials to the Board including a copy of the TAC Guidelines. Counsel submitted that when the sign was approved in 2011, it was considered a new approval and that at that time all the other class F signs mentioned by the Development Authority were there when this application was approved in 2011. There were separation rules in the Bylaw in place at that time as well. He submitted that in 2011 the Development Authority ruled a two metre separation was acceptable and that a digital sign, even with all the other existing signs, did not equal proliferation. In their opinion, the Development Authority is now saying that even though nothing has changed, this application is no longer acceptable. They are not arguing that this is not a new application as it was not renewed in the prescribed amount of time.

His client's main concern is with the application of the TAC Guidelines. Mr. Bardsley submitted a copy of these guidelines as well as single page excerpts of the TAC document for the Board's consideration.

The appellant further provided copies of the development permits of the surrounding signs. Counsel advised that, as mentioned by the Development Authority, these signs do have temporary approvals. Two of these signs were approved approximately three weeks after the original permit for the subject sign was, but, in his opinion, it is very likely that they were in existence prior to approval. There was also signs approved in 2009 and 2010, which were obviously in existence with the subject sign was originally approved. Again, this was an existing condition and nothing has changed in the subsequent years. In making that decision to approve the subject sign in 2011, with all of the above in place, the Development Authority decided that this was not proliferation. He pointed out that proliferation could have uses as a reason to substantiate a refusal but it was not.

There is no evidence of any negative impact of because of these relaxations. Counsel submitted a past Board decision that addresses this issue and shows that if there were any impacts, they have long since been absorbed into the community. In his opinion, as there is no evidence of negative impacts, the relaxations are warranted and justified. Mr. Bardsley stated that the TAC Guidelines are not law nor or they rules. When the Development Authority summarized the history of digital signs they did not mention that in July of 2011 Council accepted an interim set of guidelines or that the Transportation Department was involved in these hearings and routinely consulted by the Development Authority prior to issuing decisions on these types of applications. Even though this was not a business practice, it was appropriate. The Bylaw does have significant rules and these rules were developed by way of engagement with all stakeholders. These types of signs are different, but there are rules and Transportation did accept those rules which were implemented to improve safety. The Bylaw does somewhat acknowledge the direction of travel in relation to a sign, but the TAC Guidelines do not. The sign is visible to people coming from the off ramp from Glenmore Trail.

Counsel stated that the TAC Guidelines are based on a number of principles and assumptions. In his opinion, something like this document, with its far reaching affect, should have gone through Council if it is to be applied on applications. Further, the Guidelines themselves are a starting point and provide recommendations but not laws.

The distraction effect has been minimized by its format. There are examples of more distracting digital signs that are not third party advertising signs that are located in Calgary along other very busy roadways where there have been no proven negative impacts. It is questionable, when taking that into consideration, how the proposed sign, with all of the specific rules, could therefore be considered as a distraction. Counsel submitted that the evidence based guidelines proceed from the assumption that there is no evidence to suggest a digital third party advertising sign causes collisions. Yet they encourage, to be perfectly safe, that they be prohibited and if they cannot be prohibited it must be accepted that there is a potential to increase the likelihood of crashes. The

TAC Guidelines do indicate that there must be a balancing act. In the opinion of counsel the TAC Guidelines, which have a lot of variables, are not based on fact evidence but on best practices. There must be more to consider than just the TAC Guidelines when making decisions on third party advertising signs in areas that TAC has suggested a prohibition for. If one were to apply the TAC Guidelines, the way they are supposed to be applied, it would result in a prohibition of signs all the areas noted in the Guidelines.

Mr. Bardsley advised that if the Board was concerned with the issue of the sign being double sided, they would be willing to forgo the static side. They are more concerned with approval for the digital sign and could remove the static billboard portion. They would also be willing to accept all standard conditions typically associated with this type of development.

Upon questioning from the Board, Mr. Bardsley stated that if one were to take the TAC guidelines literally, it would result in a prohibition of this type of signs in many locations. The current rules and regulations included in the Land Use Bylaw were agreed upon by all parties in front of Council. It took three years of consultation and research, including input from the sign industry. Counsel reiterated that the TAC Guidelines in effect have become law as The City has said they will not approve this application because it does not adhere to them.

Mr. Sze, the applicant's representative, indicated that the hill in this area is very sloped and is at a high angle from the off ramp. The sign is eight metres in height and the grade difference from the ramp to the site is about five metres. Mr. Sze used the submitted photographs to indicate the location of the sign and stated that in his estimation it will be located 500 plus metres from the clover leaf shaped roadway and would not be visible from that point. It is visible from the 220 metres point. He felt a driver would be able to see the structure but not the images on the sign. In his opinion it would not be a distraction.

#### *Rebuttal*

#### Development Authority

The Development Authority's representative submitted that if the Board would consider only allowing a static sign, they would encourage the Board to deny the appeal altogether so that the applicant would have to apply for a new development permit that could be properly evaluated. The applicant would not be required to wait for six months because this is would be considered a new application. The Development Authority has not banned these types of signs but Council has indicated that The City's Transportation experts should look at all these applications. They would not have been formally circulated to the Transportation Department for safety evaluations in 2011. Mr. Loewen stated that in 2011, without knowing what Transportation thought of the application, the Development Authority approved it.

The TAC Guidelines should be used for creating regulations and also for evaluating the application. In this particular instance, Transportation has decided that this sign is not safe. They have allowed other signs in other locations, but the particulars of this application have led them to believe that this sign is not safe. The Development Authority's representative reiterated that applicant/ appellant's engineer has also agreed that this location does not meet the TAC Guidelines as noted on page 74 of the Board report. Mr. Loewen reiterated that everyone has the ability to develop their own parcel but it must be done in a manner that will not affect the overall greater public interest. This application was circulated to the appropriate departments and Transportation informed them that this was a high speed environment that requires a high degree of driver attention to navigate it safely. Mr. Knudtson stated that in 2011 the general knowledge was that these signs should be located outside of a drivers' cone of vision. The TAC Guidelines have changed this and suggest that the signs should be within the cone of vision because this is a more controlled environment. He stated the Calgary Police do not collect information in terms of accidents in this area caused by driver distractions related to the signs. Mr. Knudtson stated that in his professional opinion this sign is located in an unsafe area due to the context of the area. Anything that might possibly distract a driver from the task in front of them is a liability. There are 80,000 cars in this area and this is a concern for The City.

Ms. Belvedere commented that the key difference between this application and the previous application is now the Development Authority has the guidance of the TAC guidelines. This is an important distinction. The Board should keep in mind that the two expert opinions before the Board have both clearly indicated that the Guidelines have not been met. The only statistic that the Development Authority does have is that this is one of the top 10 roads for collisions in the city and their engineers are trying to make this road as safe as possible. There are certainly other locations that would be more appropriate for this type of sign.

#### Appellant

Counsel pointed out that their presentation on the TAC Guidelines was to help the Board understand how they were developed. Therefore to keep insisting that the applicant's engineer has also agreed that the Guidelines were not met, as stated by the Development Authority has, in their opinion, nothing to do with their argument. He advised that the Board must be aware that this is an engineering judgment. This sign has been here for three years and the test should be: is it unsafe? The practice, based on the theory, is that the sign is not a problem. The City cannot provide the Board with examples of when it has been an issue. Essentially, The City has submitted that based on professional judgment this sign is a distraction and therefore it is unsafe. In his opinion one has to read the whole TAC Guidelines document to understand it.

#### **Decision:**

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations;
- Considered all the relevant planning evidence presented at the hearing and the arguments made; and
- Considered the circumstances and merits of the application.

1. **The appeal is allowed and the decision of the Development Authority is overturned.**
2. **A development permit shall be issued with the following conditions of approval.**

### Conditions of approval

#### Permanent conditions

The following permanent conditions apply:

1. The approval of this development permit is for construction of a Digital Third Party Advertising Sign ("Sign – class G") and a Third Party Advertising Sign ("Sign – Class F") for a term of three (3) years. The permit expires three (3) years from the date of approval.
2. The development shall be completed in its entirety, in accordance with the approved plans and conditions.
3. No changes to the approved plans shall take place unless authorized by the Development Authority.
4. The sign owner must provide a contact person and telephone number, who can be reached 24 hours a day and that, has access and control to the digital technology. If the contact person/information should change in the future, the sign owner must inform the Development Authority of any changes.
5. The sign owner must ensure that an ambient light sensor is installed and actively used with the sign at all times when the sign is in operation and must adjust the sign output to changes to the ambient light levels around the sign, throughout the day. At no time while the sign is in operation may the ambient light level around the sign location exceed 3.0 LUX. The maximum light output of the sign must not exceed 7500 nits (nt) between sunrise and sunset and may not exceed 500 nits (nt) between sunset to sunrise. Sunrise and sunset will be determined based by the National Research Council of Canada Sunrise/Sunset calculator.

6. In the event of any malfunction of the technology of the sign, including the ambient light meter, the sign is to be turned off and disabled until such time as the malfunction can be repaired and the sign returned to proper operation, to the satisfaction of the General Manager of Planning, Development & Assessment.
7. A Digital Third Party Advertising Sign must not employ colours that could be confused as traffic directional or control devices. Colours, symbols or shapes that are the same or similar to those used by emergency vehicles, traffic lights or any traffic sign must not be employed (Land Use Bylaw 1P2007, Section 72(3)(a)(b)).
8. The Digital Third Party Advertising Sign must only employ the display of digital images in a static form, which must remain on the digital display for a minimum of six (6) seconds before switching to the next copy. The method of copy change must not include gradual fade, flashing, scrolling, animation or another method, to the satisfaction of the Development Authority.
9. The length of time between changes of advertising copy must not exceed 0.25 seconds.
10. Copy must not include the display of full motion video, movies, Moving Picture Experts Group (MPEG) or non-static digital copy.
11. The copy shown on the Digital Third Party Advertising Sign must not be shown in a way that a message is viewed or read over a series of sequential messages on the digital display or over multiple digital displays.
12. The Digital Third Party Advertising Sign must be designed such that the sign supports are structurally sound and can support the weight of the sign, and movement of the sign during times of high wind, wet snow and precipitation.
13. The sign owner must not, at any time, prepare the site where the sign shall be placed in a manner that would damage or remove any trees or shrubs that were existing or that were required to be in place on the site by a development permit, in order to make the sign more visible, to maintain a sign or to change the copy on the sign.
14. The sign owner must ensure that the electrical power supply to the sign is underground, to the satisfaction of the Development Authority.
15. Should a development permit application for a Freestanding Identification Sign be approved within 30 metres of this approved Digital Third Party Advertising Sign, the sign owner must immediately remove this approved sign upon expiry of this permit.

16. A development completion permit shall be applied for and approval obtained within 30 days of the approval of the development permit. Call Development Inspection Services at 403-268-5311 to request a site inspection for the development completion permit.

### **Reasons:**

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's refusal of a development permit for a temporary sign – class F (third party advertising sign, west face) and sign – class G (digital third party advertising sign, east face) at 330 65 Avenue SW. The property has a land use designation of Industrial – General (I-G) District pursuant to Land Use Bylaw 1P2007.

### *Application*

2 The application is for a double-sided third party advertising, V-shaped, sign with two display panels to be located on an industrial parcel to the north of Glenmore Trail SE, which has a speed limit of 80 kilometers per hour at the subject road portion. The west face of the sign is proposed to be a static, tri-vision, panel and the east face is proposed to be a digital display panel. The sign already exists but the previous development permit that was issued for it has expired.

3 The application requires the following relaxations of Land Use Bylaw 1P2007:

- (a) A relaxation of section 115.3(3)(b) of the Bylaw which requires that a third party advertising sign must not be located within 75.0 metres of any third party advertising sign facing the same on-coming traffic and must not result in more than two third party advertising signs within a 225.0 metre radius of each other facing the same street. There are five signs within 225 metres of the proposed signs. This is a relaxation of three signs or 150 per cent; and
- (b) A relaxation of section 115.3(3)(c)(v) as the sign is located 2 metres from the property line. This constitutes a relaxation of 4 metres or 67 per cent relaxation.

### *Reasons for Refusal*

4 The Development Authority refused the application on several grounds. The Development Authority's reasoning in its decision is as follows [unedited]:

### **Application Review and Analysis**

When reviewing the application for the proposed third party advertising sign, the Development Authority considered the rules of the Land Use Bylaw 1P2007 in conjunction with the applicable planning policies.

The purpose of the Calgary Third Party Advertising Sign Guidelines is to provide support on the appropriate use and location of Third Party Advertising Signs in Calgary. Part 4(B) of the guidelines refers to the location and siting of Third Party Advertising Signs. The following principles apply to this application:

- Principle II Third Party Advertising Signs must be located on private property along streets in such a way that their location mitigates or avoids risk to public safety. The location should not create an obstruction to vision or contribute to visual confusion with official traffic control devices.
- Principle III The placement of a Third Party Advertising Sign on a property must satisfy appropriate minimum setbacks from other buildings and structures on the parcel, street edges and parcel lines, other Freestanding Signs, other Third Party Advertising Signs, and Digital Message Signs. This will reduce sign proliferation and clutter which should be discouraged.
- Principle V Along a street or corridor, minimum separation distances between Third Party Advertising signs on different properties will maintain proper visibility of all signs and avoid visual sign clutter along the streetscape including the undue concentration of Third Party Advertising Signs along a street.

Part 4(E) of the guidelines refers to the development permit review process and states “The flexibility inherent in the development permit process for discretionary uses such as Third Party Advertising Signs allows The City to tailor the development permit approval to the specific circumstances of the location of the proposed Third Party Advertising Sign and its surrounding context.

The review of development permit applications involving Third Party Advertising Signs should take into account matters including: any relevant plans or policies, the suitability of the location and parcel for the Third Party Advertising Sign, compatibility and impact of the Third Party Advertising Sign on adjacent development, and principles of good planning.” The following principles apply to this application:

- Principle II Applications will be circulated to the Transportation Department for review of visibility and public safety issues.
- Principle VII Digital Third Party Advertising Signs may be approved for a maximum of three years. This provides a suitable time period to assess the operation of this different type of sign display and illumination technology and implement changes considered appropriate when an application is made for a new development permit.

The application was circulated to The City of Calgary Roads, Traffic Engineering representative who indicated that “Traffic does not support the renewal of the subject digital sign. The TAC guideline does not differentiate whether the sign faces the



adjacent oncoming traffic or not, or is on the opposite side of the roadway.” Further to this, Traffic Engineering has provided the following statement:

“Traffic Engineering does not support digital third party signage in areas where a high degree of driver attention is required. Roads associated with interchanges, on and off ramps and merges are a sample of where a higher degree of driver attention is required. We are also concerned with signage that is introduced into areas where there is a documented collision history or the location is adjacent to a high volume roadway.”

The bylaw states that in a 225 metre radius, there should be no more than 2 third party advertising signs facing the same on-coming traffic. The Development Authority notes that 5 signs, including the subject sign, are located within a 225 metre radius. The bylaw intends to prevent sign proliferation and clustering by restricting the number of signs in close proximity to each other as indicated in Principle V of Part 4(B) of the sign guidelines.

In Section 115.3 (3)(d), the bylaw states that the distance from a sign to the property line shared with a street can be that of the existing sign if the development permit approving the sign remains in effect. However, if a sign is in place without benefit of a development permit, the distance to the property line must be 6.0 metres (where the posted speed of the public thoroughfare is 60 kilometres per hour or less). The Development Authority notes that the previously approved development permit for the subject sign expired on October 14, 2014 and therefore no development permit approving the sign remains in effect. The proposed sign requires a 67% relaxation of the land use bylaw provision which intends to ensure the appropriate location of third party advertising signs along streets and corridors.

### Conclusion

For the reasons and excessive relaxations noted above, the Development Authority can find no compelling planning rationale to approve the Sign Class F: Third Party Advertising Sign (west face) and Sign - Class G: Digital Third Party Advertising Sign (east face). Consequently, the application is refused.

### Legislative Framework

5 The Board has regard to the following sections of Land Use Bylaw 1P2007, among others:

Section 35 which states:

#### Discretionary Use Development Permit Application

35 When making a decision on a **development permit** for a **discretionary use** the **Development Authority** must take into account:

- (a) any plans and policies affecting the **parcel**;
- (b) the purpose statements in the applicable land use district;

- (c) the appropriateness of the location and **parcel** for the proposed **development**;
- (d) the compatibility and impact of the proposed **development** with respect to **adjacent development** and the neighbourhood;
- (e) the merits of the proposed **development**;
- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the **parcel**;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

Section 37(2) which states:

#### **Development Authority's Decision**

- (2)** The **Development Authority** may refuse a **development permit** application for a **discretionary use** even though it meets the requirements and rules of this Bylaw.

Section 67 which states:

#### **Purpose**

- 67** This Division is intended to regulate **signs** in order to:
- (a) balance the need for signage and expression with safety and aesthetics;
  - (b) support a hierarchy of **signs** which places informational and directional **signs** at a higher order than commercial **signs** through the regulation of the size, location and structure of **signs**;
  - (c) provide many opportunities for the identification of businesses and **buildings**; and
  - (d) prevent **sign** proliferation, to ensure that the effectiveness of informational and identification signage is not undermined through visual clutter.

Section 72 which states:

### Development Authority's Discretion

- 72 (1) [...]
- (2) Where a type of **sign** is listed as a **discretionary use** in a District, the **Development Authority's** exercise of discretion must be guided by the:
- (a) test for a relaxation referenced in section 36 where the relaxation of a rule is requested;
  - (b) purpose statement of this Part;
  - (c) rules relating to opportunities for signage;
  - (d) character of the district where the **sign** is sought to be located;
  - (e) amount of signage in the nearby surroundings.

Section 115.3 which states:

### Siting of Digital Third Party Advertising Signs

- 115.3 (1) A **Digital Third Party Advertising Sign** must not be located within 30.0 metres of any **Freestanding Sign**, facing the same oncoming traffic;
- (2) A **Digital Third Party Advertising Sign** must be removed from a **parcel** upon expiry of the **development permit** for such a **sign** if a **development permit** application for a **Freestanding Sign** is approved within 30.0 metres of the **Digital Third Party Advertising Sign**;
- (3) A **Digital Third Party Advertising Sign**:
- (a) must be located at least 300.0 metres from any other **Digital Message Sign** or **Digital Third Party Advertising Sign** when measured from the closest point of the **sign** containing the **digital display** to the closest point of another **sign** containing the **digital display** when the **signs** are facing the same oncoming traffic;
  - (b) must not be located within 75.0 metres of any **Third Party Advertising Sign** facing the same on-coming traffic and must

not result in more than two (2) **signs** displaying third party advertising greater than 4.6 metres in height and 4.5 square metres in area within a 225.0 metre radius of each other facing the same **street**;

- (c) except where specified in subsection (d), must be located at least the following distances from any **property line** shared with a **street**:
  - (i) 17.0 metres where the posted speed limit of the public thoroughfare is 100 kilometres per hour or greater;
  - (ii) 16.0 metres where the posted speed limit of the public thoroughfare is 90 kilometres per hour;
  - (iii) 14.0 metres where the posted speed limit of the public thoroughfare is 80 kilometres per hour;
  - (iv) 10.0 metres where the posted speed limit of the public thoroughfare is 70 kilometres per hour; and
  - (v) 6.0 metres where the posted speed of the public thoroughfare is 60 kilometres per hour or less.
- (d) may be located closer to a **property line** shared with a **street** identified in subsection (c) provided that:
  - (i) the **sign** replaces an existing approved **Sign – Class F** on a **parcel**;
  - (ii) the **development permit** approving the **Sign – Class F** remains in effect; and
  - (iii) the distance from the **sign** to any **property line** is not less than that of the existing approved **Sign – Class F**.

(4) – (5) [...]

- (6) A freestanding **Digital Third Party Advertising Sign** must be separated from:
  - (a) a **Directional Sign**, exceeding 3.0 square metres in **sign area**, in a **street** right-of-way;
  - (b) a **street** intersection or railway crossing by at least 30.0 metres; and
  - (c) the curblin e or edge of a **major street, expressway** or freeway, to the satisfaction of the General Manager Transportation or his delegate.

Sections 115.5 which states:

**General Rules for Digital Third Party Advertising Signs**

- (1) The applicant for a development permit for a **Digital Third Party Advertising Sign** must show that the **Digital Third Party Advertising Sign** is compatible with the general architectural lines and forms of nearby **buildings** and the character of the streetscape or area within which it is to be located, and does not severely obstruct the horizon line.
- (2) – (8) [...]
- (9) Prior to a **development permit** expiring for a **Digital Third Party Advertising Sign**, and upon receipt of a new **development permit** application for the same **Digital Third Party Advertising Sign** at the same height, size and location, the **Development Authority** may apply the rules referenced in subsection (10).
- (10) When considering a **development permit** application for a **Digital Third Party Advertising Sign** referenced in subsection (9), the **Development Authority**:
- (a) must consider if the proposed **Digital Third Party Advertising Sign** is compatible with the general architectural lines and forms of nearby **buildings** and the character of the streetscape or area within which it is to be located, and does not severely obstruct the horizon line;
  - (b) must not approve the **development permit** if a **Freestanding Sign** has been approved and constructed within 30.0 metres of the **Digital Third Party Advertising Sign**;
  - (c) may only approve the **development permit** for the **Digital Third Party Advertising Sign** when the **use** is listed in the District; and
  - (d) must not approve the **development permit** for the **Digital Third Party Advertising Sign** when the **sign** is located within and the **digital display** is visible from 125.0 metres of a **building** containing a **Dwelling Unit**.

Section 304 states:

**304 “Sign – Class F”**

- (a) means only the following devices intended to convey meaning about, or draw attention to, a site, person, business, event,

product or commodity:

- (i) **“Third Party Advertising Sign”** which means a **sign** that contains **copy** directing attention to a business, commodity, service or entertainment that is conducted, sold or offered elsewhere than on the site where the **sign** is located; and
- (b) is a **use** within the Sign Group in Schedule A to this Byla

Section 304.1 which states:

#### 304.1 “Sign – Class G”

- (a) means only the following **sign** types:
  - (i) **“Digital Third Party Advertising Sign”** which means a **Sign** that:
    - (A) displays **copy** directing attention to a business, commodity, service or entertainment that is conducted, sold or offered elsewhere than on the site where the **sign** is located, and
    - (B) displays **copy** by means of a digital display but does not contain copy that is full motion video, or otherwise gives the appearance of animation or movement; and
  - (b) is a **use** within the Sign Group in Schedule A to this Bylaw.

Section 908(2) lists “Sign-Class F” and Sign-Class G” as a discretionary use in the I-G District.

6 The Board has regard to the “Calgary Third Party Advertising Guidelines”, as approved by Council July 30, 2012. It states the following, in part:

#### 4. Principles of Third Party Advertising Sign Regulation

- (A) [...]
- (B) **Location and Siting**

The appropriate location and placement of a Third Party Advertising Sign in an area produces a compatible relationship with other buildings, signs and the surrounding context. Achieving an appropriate distribution and spacing of Third Party Advertising Signs along a street or corridor promotes visibility, public safety and a

sound streetscape. It also avoids creating visual sign clutter from the proliferation of too many signs.

### **Principles**

- I. [...]
- II. *Third Party Advertising Signs must be located on private property along streets in such a way that their location mitigates or avoids risk to public safety. The location should not create an obstruction to vision or contribute to visual confusion with official traffic control devices.*
- III. *The placement of a Third Party Advertising Sign on a property must satisfy appropriate minimum setbacks from other buildings and structures on the parcel, street edges and parcel lines, other Freestanding Signs, other Third Party Advertising Signs, and Digital Message Signs. This will reduce sign proliferation and clutter which should be discouraged.*
- IV. *Priority must always be given to a business owner to advertise on their parcel over the ability to have a Third Party Advertising Sign. Any Third Party Advertising Sign that no longer meets the separation rules from other first party signs should be reviewed and discouraged upon renewal of a permit*
- V. *Along a street or corridor, minimum separation distances between Third Party Advertising Signs on different properties will maintain proper visibility of all signs and avoid visual sign clutter along the streetscape including the undue concentration of Third Party Advertising Signs along a street.*
- VI – VII. [...]

(C) [...]

### **(D) Illumination and Operational Characteristics**

The technology of a digital display makes the entire Third Party Advertising Sign a direct light source and the sign must emit light both day and night to be visible. The sign's highest luminance levels or brightness are during the day in order to be seen in sunlight. Less luminance is required at night.

Digital displays also give signs the flexibility to change sign copy frequently. Single images can be displayed and changed in sequence or full animation video can be shown on the sign as well as other kinds of animation and graphic effects.

These new operational characteristics of signs with digital displays increase their ability to attract attention and potentially distract drivers as they attempt to follow the changing messages and images.

Rapidly changing sign copy can also alter the visual character of an area where, except for the movement of traffic, the visual environment consists predominantly of objects and surfaces that do not move, change or flash. In some settings, this visual excitement from signs may help define or brand a place; in others it can be disturbing and inappropriate.

### **Principles**

I. – IV. [...]

V. *Minimum separation distances between Digital Third Party Advertising Signs, Digital Message Signs and Third Party Advertising Signs will maintain proper visibility and prevent a proliferation of signs with automatically changing messages that could impact area aesthetics and the streetscape.*

VI. [...]

### **(E) Development Permit Review Process**

The flexibility inherent in the development permit process for discretionary uses such as Third Party Advertising Signs allows The City to tailor the development permit approval to the specific circumstances of the location of the proposed Third Party Advertising Sign and its surrounding context.

The review of development permit applications involving Third Party Advertising Signs should take into account matters including: any relevant plans or policies, the suitability of the location and parcel for the Third Party Advertising Sign, compatibility and impact of the Third Party Advertising Sign on adjacent development, and principles of good planning.

### **Principles**

I. *The objective for the review of development permits for Third Party Advertising Signs is to maintain and improve the quality of Calgary's communities and its overall visual character.*

II. *Applications will be circulated to the Transportation Department for review of visibility and public safety issues.*

III. – VII. [...]



- VIII. *When reviewing an application for any Third Party Advertising Sign, the Development Authority may consider relaxing bylaw standards provided that the applicant can demonstrate that such relaxations are unique, do not create a clustering of signage on a parcel or lead to sign proliferation in the general area.*

7 The Board also has regard to the “Digital and Projected Advertising Displays: Regulator and Road Safety Assessment” Guidelines, established in March 2015 by the Transportation Association of Canada (TAC).

#### *Development Authority’s Position*

8 The Development Authority refused the subject application based on the conclusion of The City of Calgary Road department (Traffic Engineering) that the location is inappropriate based on the TAC Guidelines. At the hearing the Development Authority stated that the required Bylaw relaxations are less of an issue. Although the signs were approved in 2011 for a period of three years, the Development Authority exercised its discretion based on section 35 of the Land Use Bylaw and refused the renewal of the signs for the same location. In the Development Authority’s opinion there have been changes since the previous approval of the sign: the policies changed; the Calgary Third Party advertising Guidelines were established in 2012; and the City now has the benefit of the TAC Guidelines.

#### *Appellant’s Position*

9 In the appellant’s opinion nothing has changed in the area surrounding the sign since the previous approval of the sign. There is no negative impact established from the Bylaw relaxations which were previously granted. The appellant submitted that the application of the TAC Guidelines as applied by the City’s Traffic Engineering would result in a blank prohibition of signs along Glenmore Trail. The appellant stated that there is no evidence to suggest a digital third party advertising sign causes collisions or that the sign is a distraction.

#### **Analysis**

10 The Board acknowledges the submissions of all parties, including but not limited to the appellant, Development Authority, and affected parties. The Board considered all relevant evidence and arguments either in favour of or against the application.

11 The Board reviewed the context of the proposed development and the required relaxations, having regard to sound planning considerations, the merits of the application, the circumstances of the case, the evidence presented, and the arguments made by the parties.

12 The Board finds that nothing turns on the fact whether the subject application is considered for a new sign development or for renewal of the previous permit that has

expired. The previous approval was limited to a permit with a term of three years. Under the Bylaw a new development for the signs is required in any event. In essence, the rules and requirements of the Land Use Bylaw for third party advertising signs are the same, irrespective whether it is for a new proposed sign or a renewal of an existing sign.

13 The subject development permit application is a discretionary use development. Pursuant to section 37(2) of Land Use Bylaw 1P2007, the Development Authority may refuse a development permit application for a discretionary use even though it meets the requirements and rules of the Bylaw. Therefore, the Development Authority can refuse an application for a discretionary use development based on, among other things, sound planning considerations and planning rationale.

14 Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use the Development Authority must take into account the things listed in subsections (a) through (j). Pursuant to section 35(a) the Development Authority must take into account any plans and policies affecting the parcel. Therefore the policies of the Calgary Third Party Advertising Sign Guidelines must be taken into account. In addition, among other things, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood, the merits of the proposed development, access and transportation requirements, and sound planning principles must be taken into account. In addition, section 72(2) of the Bylaw provides supplementary criteria for the Development Authority's exercise of discretion regarding a discretionary use development permit application for a sign.

15 While the Calgary Third Party Advertising Sign Guidelines document does not have the same status as a land use bylaw, this policy document (approved by City Council) provides guidance to the Development Authority in the review of applications for third party advertising signs, which are a discretionary use. The Development Authority has discretion how it interprets the policies of the Third Party Advertising Sign Guidelines.

16 The Board in weighing the evidence finds that the required relaxations from a planning perspective are not an issue. The Board finds there is no established negative impact in or of itself from these relaxations. Mr. Knudston of The City's transportation engineer confirmed this more or less. The Development Authority has not demonstrated any undue interference with the amenities of the neighbourhood or material interference with the use and enjoyment of neighbouring properties. Therefore the development with these relaxations meets the criteria of section 687(3)(d) of the *Municipal Government Act*. In the Board's opinion sign proliferation is not an issue in this case as there are numerous third party advertising signs existing in the vicinity of the proposed signs. As a matter of fact all these signs have been approved in recent years by the Development Authority. Apparently, proliferation was not an issue for the Development Authority at that time. This is a factor to be considered. The Board finds that allowing the subject signs to remain does not create proliferation contrary to the Bylaw and the Third Party Advertising Guidelines.

17 Section 67(a) of the Land Use Bylaw provides that the Sign Division of the Bylaw is intended to regulate signs in order to balance the need for signage and expression with safety and aesthetics. The Board concludes that this section which is contained in the Land Use Bylaw since it was established, always mentioned safety as a factor and objective for the Bylaw rules regarding signage.

18 Prior to 2012, when the Calgary Third Party Advertising Guidelines were established and adopted by The City of Calgary, the City had for many years the "A Billboard Development Policy Guide For Calgary" (Billboard Policy Guide – a non statutory document). The Billboard Policy Guide did not mention digital third party advertising signs as it predated these types of signs. At the time the Development Authority applied the policies of the Billboard Policy guide when it evaluated development permit applications for third party advertising signs (including digital billboards) until the new guidelines were adopted by City Council.

19 The Board notes that the Calgary Third Party Advertising Sign Guidelines in section 4E(Principle II) states that applications for third party advertising signs will be circulated to the Transportation Department for review of visibility and public safety issues. In this case that happened. The Board finds it important that in the Calgary Third Party Advertising Sign Guidelines there is no reference to the TAC Guidelines.

20 Regarding the TAC Guidelines the Board finds it significant that this document has not been adopted by City Council like other policy documents that apply to development permit applications. It is the evidence of the Development Authority that The City's Traffic Engineers use this document to evaluate or assess applications for a third party advertising sign like the subject application. The TAC Guidelines in the executive summary (page 2) states that these guidelines are intended to assist jurisdictions in developing their own DPAD (Digital and Protected Advertising Displays) regulations, evaluating DPAD permit applications, and assessing their potential road safety impact.

21 The TAC Guidelines state in section 1.2 (page 5), among other things, that "[t]he guidelines are specific to the road safety impacts of DPADs in terms of the possible change in collision risk attributed to potential driver distraction caused by these signs". In section 2.1.4 it states that "[d]espite years of research there have been no definitive conclusions about the presence or strengths of adverse safety impacts of DPAD's measured by increased collision frequency." Further it states in section 2.4, (page 18) among other things, that "[a]dvertising and DPADs in particular are unnecessary roadside features in terms of safely operating the transportation system" and "[f]rom a strict road safety perspective, DPADs (and any other form of advertising or non-essential roadside feature) should be prohibited. However this may not be practical, feasible, or desirable and risks violating freedom of expression rights protected by the Canadian Charter of Rights and Freedoms." The Board finds these are significant factors.

22 The Board agrees with the appellant that given the weight the Development Authority and The City of Calgary Transportation (or Roads, Traffic Engineering) department gives to the TAC Guidelines it is of significance that these guidelines have

not been approved or adopted by City Council. The Board notes that almost all crucial policy documents of The City of Calgary regarding planning, land use and development, even though they are not statutory plans, are typically adopted or approved by resolution of Council. In light of the fact that section 35 of the Land Use Bylaw references policies affecting a parcel and that the Development Authority and City Transportation places so much weight on policies and guidelines it is reasonable to expect that policies or guidelines The City of Calgary, in particular the Development Authority and The City's Transportation adopts for evaluating discretionary development permit applications at a minimum would be approved by Council. In this case, a non approved policy document, the TAC guidelines becomes *de facto* the sole grounds for refusal of a development permit application. From a legal perspective that results in *de facto* prohibitions in certain location, as the appellant's counsel correctly pointed out.

23 The Development Authority and Mr. Knudtson stated that Glenmore Trail SE has a high collision rate. He stated it is in the top ten of Calgary roads in terms of collision volumes. He stated that his opinion that the sign location is unsafe and should not be approved is based on the TAC Guidelines and on 14 years experience as a transportation engineer.

24 The case authority of *Gendron v. Calgary (City)*, 2009 ABCA 367 (at para. 16) stands for: Simply raising an issue without more is not evidence. There must be some basis in fact. The Board finds that this principle or factor applies to opinion based evidence too, as was set out in case authority such as *Esposito v Alberta (Workers' Compensation Board)*, 2009 ABQB 188. The weight appropriately given to opinion evidence depends on the facts which underlie the opinion. In order to assess the veracity of opinion evidence, the Board must consider whether the opinion is sufficiently grounded in facts.

25 Mr. Knudtson did not present any data regarding collision numbers on Glenmore Trail SE. In addition, the reference to the high number of accidents on Glenmore Trail is in the Board's view inconclusive of anything as there is no evidence as to the criteria used to determine what constitutes a high accident/collision rate and the relevance of it in relation to a digital sign. Further in the Board's view each portion of Glenmore Trail SE may have different collision numbers. Therefore, it is difficult to put weight on Transportation's opinion, albeit if any could be accepted in this regard.

26 The Board found it telling that when questioning Mr. Knudtson about his opinion and he was asked to explain any specific guidelines of the TAC Guidelines, he paused long and was searching for an answer.

27 The Board places weight on the facts that the TAC Guidelines, section 2.1.4, state that despite years of research there have been no definitive conclusions about the presence or strengths of adverse safety impacts of DPAD's measured by increased collision frequency.

28 The Development Authority's representative submitted that the appellant's consultant, Jason Dunn, senior transportation engineer, of Bunt & Associates also

stated that the proposed signs do not meet the TAC guidelines (page 74 of the Board report). The Board notes that this is correct. However, Mr. Dunn also stated that there is no proof that the mentioned collisions were caused by the location of the subject sign. He also states that the literature is inconclusive on the relationship between DPAD and frequency of collisions, that the literature shows that there could be statistically insignificant increase in frequency of distraction and that the literature agrees that distraction, though may lead to conflicts, does not necessarily lead to collisions (page 74 of the Board report).

29 The Board finds that there is no evidence of an increase in accidents near digital third party advertising signs. Neither is there evidence that a digital sign is more distracting to motorist than other distractions that are already in the immediate area surrounding the sign location or than the existing sign that is located at this location.

30 In weighing the evidence, the Board prefers the evidence and arguments of the appellant over the evidence and arguments of the Development Authority and Transportation. The Board finds the appellant's evidence and arguments more compelling than the Development Authority's and Transportation's evidence and arguments. Respectfully, the Board found Mr. Knudtson's testimony rather weak and lacking in evidentiary foundation.

31 The Board finds that under the scheme of the Land Use Bylaw and the Calgary Third Party Advertising Sign Guidelines safety is one of several factors for evaluating development permit applications for third party advertising signs. It is not the only factor.

32 The Board places weight on the facts that the signs have existed for three years at this location and there are other third party advertising signs along the same stretch of Glenmore Road SE that been approved by the Development Authority in the last few years. There are other potential distractions on the parcels on the north side of this road as these are parcels located with buildings and industrial uses. There is an escarpment. The evidence indicates that the base of the digital sign is several metres above the road and the ramp to it, which is clear from the photographic evidence. The Board, based on the location of the sign and the driver access to the ramp, concludes that the sign is really only visible when a driver reaches the point on the merging lane nearly parallel to the sign. There are few, if any, physical changes in the make-up of buildings surrounding the sign from the approval three years ago.

33 Furthermore, in the Board's opinion, the proposed sign is compatible with the general architectural lines and forms of nearby buildings and the character of the streetscape or area within which it is located, and would not severely obstruct the horizon line, as required by section 115.5(1) of the Land Use Bylaw.

34 The Board, based on the evidence and aforementioned factors, finds that the proposed signs are in keeping with the Calgary Third Party Advertising Sign Guidelines.

34 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed signs and relaxations would not unduly interfere with the

amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

35 Based on the evidence and aforementioned factors, and having regard to sound planning considerations, the Board, in keeping with section 35 of the Land Use Bylaw, finds that the proposed signs are compatible with the adjacent developments and neighbouring properties. The sign is appropriate for the parcel.

36 Having regard to sound planning considerations and in accordance with the Land Use Bylaw, the Board imposes standard conditions of approval on the permit. The Board notes that the conditions of approval of the previous development permit DP2011-1774 require that the electrical power supply to the sign shall be underground. The submitted plans indicate that the power supply is overhead. Therefore this is contrary to the conditions of the previous permit. The Board notes the Land Use Bylaw, section 114(8), requires underground power supply. Accordingly this condition is included.

37 In reviewing and weighing all the evidence, the Board therefore finds that the proposed development in this instance warrants approval.

### **Conclusion**

38 For the above reasons the Board allows the appeal and overturns the decision of the Development Authority.

39 A development permit shall be issued with above listed conditions of approval.

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Rick Grol, Chairman  
Subdivision and Development Appeal Board

Issued on this 20<sup>th</sup> day of October, 2015