



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 12, 2016
Project Number: 221958128-001
File Number: SDAB-D-16-149

Notice of Decision

- [1] On July 28, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 3, 2016. The appeal concerned the decision of the Development Authority, issued on May 27, 2016, to approve the following development:

To change the use from a General Retail Store to a Pawn Store (Cash Canada Pawn Shop).

- [2] The subject property is on Plan I Blk 65 Lots 13-15, located at 10650 - 82 Avenue NW, within the CB2 General Business Zone. The Pedestrian Commercial Shopping Street Overlay, Whyte Avenue Commercial Overlay, and Strathcona Area Redevelopment Plan apply to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with attachments, proposed plans, and the approved Development Permit;
- Development Officer's written submissions, received June 23 and July 27, 2016;
- Written submissions of Appellant 1, Mr. A. Joyce, received June 22 and July 22, 2016;
- Written submissions of Appellant 2, Old Strathcona Business Association, received July 8 and July 26, 2016;
- Written submissions of the Respondent, received June 27, 28, July 22, 26, and 27, 2016;
- Ten online responses in opposition to the proposed development;
- One letter of opposition from WAM Development Group, dated July 25, 2016; and
- One letter of opposition from Don Wheaton Chevrolet Buick GMC Cadillac Ltd., dated July 27, 2016.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26.

Summary of Hearing*i) Position of Appellant 1, Mr. A. Joyce*

- [7] Mr. Joyce explained that he filed his appeal on behalf of Garneau Condominiums, located directly west of the proposed development. A number of residents from surrounding properties subsequently expressed support for the appeal, including those residing north of the strip mall and directly north of Garneau Condominiums. Ultimately, he is representing approximately 150 condominium residents in the neighbourhood, and has obtained 65 signatures from individuals who live or work in the neighbourhood and who oppose the proposed development.
- [8] Upon questioning by the Board with respect to this petition, Mr. Joyce acknowledged that the signatures represent approximately half of the aforementioned 150 condominium residents and that some residents declined to sign the petition.
- [9] Mr. Joyce submitted that the Development Officer's decision to approve this pawn shop appears to run counter to the efforts of the Business Association, as well as the strategies and goals of the Strathcona Area Redevelopment Plan (the "ARP"), which encourages the development of family and pedestrian friendly communities. In his view, the pawn shop's clientele will visit the shop for that sole purpose, and will not contribute to this vision.
- [10] Mr. Joyce reviewed the goals of the ARP, and submitted that the proposed pawn shop is inconsistent with these goals. A pawn shop is a resale outlet that is unlike the second hand clothing stores in the area, and is incongruent with the existing stores located along Whyte Avenue.
- [11] Mr. Joyce also reviewed the Whyte Avenue Commercial Objectives under the ARP, one of which states: "Promote diversity, uniqueness and a full range of businesses and services for all residents and visitors to the area, while maintaining the compatible and balanced mix of businesses currently existing in the Whyte Avenue Commercial Area." In his view, pawn shops are by nature a predatory business that attempt to profit from

people's misfortunes, and is not a practice that the ARP endorses. Its proposed location on Whyte Avenue is antithetical to the ARP.

- [12] Upon questioning by the Board, Mr. Joyce expressed the view that pawn shops should be located in light industrial areas, separated from residential and commercial areas such as Whyte Avenue.
- [13] He also expressed concerns with respect to the potential impacts of the proposed pawn shop, such as attracting transients, and an increase in crime such as burglary, graffiti and drug transactions.
- [14] The strip mall in which the proposed development is located is already experiencing difficulties. The proposed pawn shop will exacerbate these problems. Referring to his written submissions, Mr. Joyce noted that the sociological literature categorizes pawn shops as crime attractors, and that the crime effect stretches to adjacent blocks in the area.
- [15] Mr. Joyce noted that there is another pawn shop located at Whyte Avenue and 100 Street. He has had informal conversations about that pawn shop with police officers, who have indicated off the record that there is greater criminal activity on the corner of the street where that pawn shop is located.
- [16] Mr. Joyce indicated that he was impressed with the operation when he took a tour of one of the Respondent's stores and he acknowledged that the Respondent was working hard to improve the image of Pawn Stores. However, he was more concerned about the ripple effect that took place outside pawn shops than what went on inside them.
- [17] Upon questioning by the Board, Mr. Joyce expressed the view that the pawn shop's hours of operation will not mitigate his concerns.

ii) *Position of Appellant 2, Old Strathcona Business Association*

- [18] Appellant 2 was represented by Mr. M. Davison.
- [19] Mr. Davison provided background information about the Old Strathcona Business Association, which represents over 600 businesses in the Old Strathcona area. The Old Strathcona area is one of 13 Business Revitalization Zones as contemplated under the *Municipal Government Act*, and is recognized as an economic, cultural and social hub of activity, as well as a destination of choice for tourists and visitors. There is currently \$250 million invested over the next two years toward increasing residential density within the area, while minimizing bars and night clubs.
- [20] Upon questioning by the Board, Mr. Davison acknowledged that there are existing bars and night clubs which would not agree with the Association's efforts to move away from bar and nightclub developments. He further acknowledged that these same businesses may not take the same position as the Association with respect to this appeal.

- [21] Mr. Davison submitted Exhibit “A”, a report entitled “Health Indicators to Evaluate the Business Revitalization Zones Economic Well Being”, which had been presented before City Council. Four main long term outcomes were identified for Business Revitalization Zones (“BRZ”): they are 1) aesthetically pleasing, 2) considered “destination locations”, 3) perceived as safe, and 4) have real estate that is in demand. The report included an attachment titled “Business Revitalization Zones Logic Model”, which identified the perception of safety as a health indicator for the well-being of a BRZ Zone. In short, the perception of crime can positively or negatively impact consumer behavior.
- [22] In Appellant 2’s view, a pawn shop is not considered a “destination location”, nor does it contribute to the perception of safety. In support, he referred to Section 819.3(11) of the Pedestrian Commercial Shopping Street Overlay, which provides in part that “Architectural treatment of new developments shall ensure that... the placement and type of windows shall allow viewing into the building to promote a positive pedestrian-oriented shopping street.” He submitted that pawn shops typically have covered windows with bars. Until the development enters the construction phase, it will be impossible to determine whether such development criteria are met.
- [23] Upon questioning by the Board, Mr. Davison expressed the view that the proposed pawn shop would be more appropriate further south along 104 Street and 103 Street, toward University Avenue. Such a location would also provide greater accessibility. On further questioning, he acknowledged that it would be more appropriate to locate the pawn shop at the proposed location in the strip mall where it is separated from the sidewalk rather than fronting directly onto a sidewalk along Whyte Avenue. However, it was Appellant 2’s preference that a developer eventually buy the entire Site on which the strip mall is located and redevelop it.
- [24] Mr. Davison explained that Appellant 2 collaborated with the City to draft the ARP and applicable overlays, with the main goal being discouraging crime generators or attractors.
- [25] Referring to the written submissions of Appellant 2, Mr. Davison noted that research indicates that pawn shops attract crime. The Board noted that the studies appeared to be specific to certain American cities, which may differ from Edmonton generally, and the Whyte Avenue area specifically. Mr. Davison acknowledged this distinction, but noted that parallels may be drawn and that the overall message is that pawn shops, at minimum, create a perception of being a crime generator which may impact surrounding businesses.
- [26] Referring to the Edmonton Police Service (“EPS”) Crime Map submitted as part of the Association’s written submissions, Mr. Davison noted that there is an increase of reported crime incidences in the Old Strathcona area caused both by the popularity of the area, as well as businesses such as pawn shops. The Board noted that crime incidences appear to fluctuate throughout the year, and questioned whether the apparent increase in the reported crime incidences correlate to specific times of the year. In response, Mr. Davison stated that there is now less documentation of crime, so the Association has

concerns not only with regard to the reported incidences, but also the number of unreported incidences.

- [27] As an example, he referred to another pawn shop located along 100 Street and 82 Avenue. Mr. Davison stated that Appellant 2 is aware of complaints with regard to this pawn shop, and that there are EPS statistics pertaining to crime incidences that have occurred at this pawn shop and the immediately surrounding area. However, the EPS has requested that the Association not share this information with the Board.

iii) Position of Affected Property Owner in Opposition to the Development, Ms. J. Kostoulias

- [28] Ms. Kostoulias expressed concerns with respect to the description of the location of the proposed development on the permit as approved by the Development Officer. She noted that the permit appears to approve a Pawn Store for the entire strip mall located at 10650 – 82 Avenue NW. The Board noted her concerns, and stated that the Development Officer may provide some clarity in this respect.
- [29] The Board also explained that what is approved is the Site legally described as Plan 1 Blk 65 Lots 13-15. The Board referred to the approved Site Plan, which clearly indicated that the proposed Pawn Store is located on Lots 13-15. The Board noted that the Specific Address of the proposed development as identified on the Permit is the Suite and Entryway address, 10662 – 82 Avenue NW.
- [30] Ms. Kostoulias then provided a brief overview of the significant improvements that the area has seen over the past years. The proposed development, in her view, does not comply with the intent of the ARP, and will detract from these improvements.

iv) Position of Affected Property Owner in Opposition to the Development, Varscona Hotel

- [31] The Varscona Hotel was represented by Mr. H. Von Blonde and Ms. D. Li.
- [32] They stated that the location of the hotel is important for its customers, who often rely on online reviews on travel sites such as TripAdvisor when making hotel reservations. Should the proposed development be approved, they are concerned that potential customers will read about a pawn shop being located in close proximity to the hotel, which might deter them from booking a reservation and thereby negatively impacting their business.
- [33] They explained that when selecting hotels, guests do consider the area in which the hotel is located. Businesses such as pawn shops which are perceived as crime attractors or generators will impact not only their hotel's business, but businesses in general.
- [34] Upon questioning with respect to the crime statistics presented by Appellant 2, they stated that in the past four years, they have observed an increase in crime, even if the

reported crime incidences appear to fluctuate. They have noticed a greater transient population, and guests have had items such as GPS systems stolen from their vehicles. It was their view that the increase in crime is caused partly by the redevelopment of the downtown core, resulting in the transient population migrating to other parts of the city such as Whyte Avenue.

v) *Position of Affected Property Owner in Opposition to the Development, Mr. K. Evasiw*

[35] Mr. Evasiw described an incident wherein he was physically assaulted by an unsavoury character riding on a bicycle, which is a prohibited activity along the sidewalks of Whyte Avenue. He is also aware of another individual who was similarly assaulted.

[36] Mr. Evasiw expressed concerns about the proposed pawn shop adding to the congestion on the sidewalks of Whyte Avenue. Due to pedestrian traffic, there are already many near-misses from vehicular traffic and restricted sightlines. He distinguished the proposed business from previous businesses at the subject site, such as Rogers Video. These previous businesses attracted customers who visited the Site for short durations, and not for the purposes of transporting or delivering goods. A Pawn Store, by contrast, will attract customers who will bring goods and items to the store, and will contribute to the existing traffic congestion on the pedestrian sidewalks.

[37] Upon questioning by the Board, Mr. Evasiw explained that the strip mall in which the pawn shop is located has a parking lot which exits onto 107 Street, with traffic heading north-south. Vehicles entering and exiting the parking lot will need to cross the sidewalk along 107 Street, through pedestrian traffic. He stated that pedestrian fatality has occurred in the area, and that pawn shop clients who will likely be transporting their goods using motor vehicles and trucks will exacerbate these concerns.

[38] Mr. Evasiw had also spoken with the owner of the pizza shop located in the same strip mall, who expressed opposition to the proposed development. In Mr. Evasiw's view, the pawn shop is a step back from the revitalization efforts for the Whyte Avenue area.

vi) *Position of Affected Property Owner in Opposition to the Development, WAM Development Group ("WAM Development")*

[39] WAM Development was represented by Ms. C. Wilson, who clarified that she was speaking on behalf of its partnership with Wheaton Investments Ltd. for a redevelopment project located in close proximity to the proposed development. Although WAM Development is not part of the Strathcona Business Association, its partner is a member of the Association.

[40] Ms. Wilson reiterated the concerns expressed in WAM Development's letter of opposition, dated July 25, 2016. The letter expressed the view that the Development Officer erred in approving the proposed development, as it will negatively and unduly

interfere with the amenities of the neighbourhood, and compromise the use, enjoyment and value of future developments.

- [41] WAM Development noted that pawn shops typically have metal bars and covers over their windows to prevent theft, which contravenes the purpose of the Pedestrian Commercial Shopping Street Overlay. WAM Development expressed the view that pawn shops do not contribute to the thriving shopping district of Whyte Avenue, and are incongruent with the heritage, character and livability of the Old Strathcona area.

vi) Position of Affected Property Owner in Opposition to the Development, Ms. N. Stenzel

- [42] Ms. Stenzel stated that she represents property owners residing in condominium buildings located at 10265 – 83 Avenue and 10745 – 83 Avenue, totaling 47 units. She, herself, lives in a condominium unit located on 10265 – 83 Avenue.
- [43] Ms. Stenzel expressed concerns with respect to rear laneway access to the condominium building. She noted that the laneway access is effectively a one-way alley, with dumpsters that impede traffic through the laneway. The rear laneway is the only access to the condominium building, with a loading bay that already has existing problems related to tandem parking extending into the back alley. The condominium property worked closely with Varscona Hotel to minimize the impact of its delivery trucks upon residents who reside within the condominium complex.
- [44] It was her view that the proposed pawn shop will exacerbate the existing traffic concerns, and that other businesses such as a spa or flower shop, with limited delivery hours, will be more appropriate for the proposed location.
- [45] Ms. Stenzel also expressed concerns similar to those of neighbouring property owners about the crime attractors associated with pawn shops. In addition, it was her view that property values drop significantly when located in close proximity to pawn shops. In support, she submitted Exhibits “C”, “D”, and “E”, a combination of MLS listings for properties within a 60 metre radius of a pawn shop, and tax assessments of properties located in the vicinity of pawn shops. She observed that the various properties cited in the MLS listings sold below market value, and that tax assessments of properties located near pawn shops saw a devaluation in the respective property.
- [46] As a licensed real estate agent, Ms. Stenzel also had a client who initially expressed interest in a home, but ultimately decided against purchasing the property when it was discovered that a pawn shop was located nearby.

vii) Position of Affected Property Owner in Opposition to the Development, Don Wheaton Chevrolet Buick GMC Cadillac Ltd. (“Don Wheaton”)

- [47] Don Wheaton was represented by Mr. G. Gardner and Ms. A. Wheaton.

- [48] Mr. Gardner referred to Don Wheaton's letter of opposition, noting that the proposed use will interfere with the amenities of the neighbourhood and affect the value of neighbouring parcels of land. In addition, the proposed pawn shop, with its barred and covered windows, will dull the vibrancy of the neighbourhood.
- [49] Upon questioning by the Board, Mr. Gardner stated that it was his perception that there has been an increase in traffic congestion and criminal elements since the construction of the strip mall. He acknowledged that the impact of pawn shops is dependent upon the neighbourhood or community in which it is located. It was his view that the proposed pawn shop, located as it is along Whyte Avenue, will have a significant impact upon the area, both to residents and businesses alike.

viii) Position of the Development Officer, Mr. I. Welch

- [50] Mr. Welch acknowledged that the proposed development is a Discretionary Use, and as such, the Development Officer must consider various factors when determining whether to exercise his or her discretion to refuse an application.
- [51] He explained that within the Development Authority, the exercise of discretion is understood to be the right to refuse an application. A discretionary application can be either one that is a Discretionary Use within a zone, or one that requires a variance. The decision to approve or refuse a development is based on a number of factors, including a review of the proposed plans, the applicable statutory plans, the results of community consultations, the applicable zoning in effect, as well as the criteria laid out under the *Municipal Government Act*, which focuses on the potential impacts of the proposed development. In considering these factors, the Development Officer adopts an evidence-based approach.
- [52] Mr. Welch acknowledged that Pawn Stores are controversial and the concerns expressed by the neighbouring property owners are not to be trivialized. However, as a Development Officer exercising an evidence-based approach, his main concern is that the perception of pawn shops as crime generators or crime attractors cannot necessarily be proven, and further, that the negative perception of Pawn Stores may not be universal.
- [53] Mr. Welch also explained that the Development Authority has established a key standard for Discretionary Uses, which is that it will regulate uses but not users. In this particular case, the application was reviewed based on the use – a proposed Pawn Store – and not the potential users – the target clientele or the people the Pawn Store might attract.
- [54] With respect to Ms. Kostoulia's concerns about the limits of the Development Permit, Mr. Welch confirmed that the proposed development is restricted to the three lots as marked on the approved site plans. He explained that one of the quirks of addresses in Edmonton is that there can be multiple and different addresses for the lot, building and specific bays of the building. He assured the Board that the Applicant will be restricted to

the terms of the permit, and that if it were to expand its operations beyond the authorized bays, it would need to make a new development application.

- [55] Regarding the WAM Development partnership with Wheaton Investments to redevelop land in the area, he noted that that proposal was still preliminary and had not received rezoning approval yet.

ix) Position of the Respondent, Cashco PW

- [56] The Respondent was represented by Mr. T. Latimer, C.E.O. Mr. Latimer was accompanied by Ms. M. Jhamb, Business Development Administrator, Ms. D. Machado, C.O.O., and Mr. E. McMartin, Oliver Location Manager.

- [57] Mr. Latimer stated that stolen merchandise consists of less than 0.25% of the business' transactions. All the Respondent's stores are linked to the Electronic Police Reporting system, which requires two pieces of government-issued ID, and the client's home address and phone number. Many neighbouring property owners have expressed concerns about the transient population that pawn shops attract, but Mr. Latimer noted that transient individuals typically do not possess the information required by the Electronic Police Reporting system.

- [58] Further, when receiving items for collateral, employees must enter the item's serial number, and the system will automatically flag the item if it has been reported stolen. All stolen items are returned to the rightful owner at the company's expense. Numerous regulations govern the operation of pawn shops, and the Respondent can be fined for not following these regulations.

- [59] Mr. Latimer also noted that within the last ten years, the Respondent has not experienced any robberies or violent crimes. He submitted that this may be because the Respondent is operated as a contributor to the community, implementing an open-door policy with local law enforcement agencies. For example, peace officers may enter and search the property without a warrant, thereby minimizing barriers to crime prevention.

- [60] With respect to the pawn shop's operations, Mr. Latimer explained that the pawn shop will provide loans for collateral, and it will not offer payday loans. Loans are typically in small amounts, averaging \$116, with over 80% of loans being redeemed or paid off. He submitted that the Respondent serves the underbanked, those members of the population who cannot establish a traditional, meaningful banking relationship. For such individuals, their savings account is the property that they own. Unlike traditional banks, the Respondent develops a one-on-one relationship with these types of individuals, who are often return customers.

- [61] Referring to the Respondent's written submissions, Mr. Latimer noted that 55% of its users access its services to obtain funds for necessities such as groceries; 22% access services for bill payments; and 34% for unexpected expenses. The Respondent also caters

to bargain hunters, thrifty shoppers and collectors, which makes it ideal for the Whyte Avenue area. Further, he observed that some of their clientele simply have a different mentality with respect to financing purchases. For example, some of their customers own credit cards, but choose to obtain a loan through the Respondent as it will force them pay back the loan in exchange for the collateral item. In his view, the Respondent serves a segment of the population that cannot typically be served by traditional banking arrangements.

[62] Mr. Latimer also observed that the pawn shop industry is transforming. Similar to how the Edmonton Pride Festival or tattoo parlours were previously frowned upon, but are now viewed as central to the identity of the Whyte Avenue area, he expressed the view that pawn shops will contribute to the existing eclectic mix of businesses and in the future, will ultimately add vibrancy to the community.

[63] Mr. Latimer referred to the Respondent's Pawn Princess program, one of the company's community outreach initiatives which led to local law enforcement approaching the business for assistance dealing with domestic violence within the community. The company also encourages its employees to volunteer within the community. Employees may volunteer for up to 40 hours and the company will compensate them for that time.

[64] The proposed development will operate from 9:00 a.m. to 8:00 p.m. on weekdays, and 10:00 a.m. to 5:30 p.m. on weekends. It is a legitimate business with a loyalty point program which encourages return customers.

[65] Mr. Latimer acknowledged the concerns about the pawn shop's exterior being inconsistent with other shop frontages. He noted that the picture attached to WAM Development's letter of opposition is not an accurate reflection of the concept plan for the proposed development. Referring to images submitted as part of its written submissions, he noted that the proposed development will have an interior design with an open layout. During hours of operation, windows will be clear and no bars will impede the view into the store. Upon questioning by the Board, Mr. Latimer stated that the Respondent is prepared to work with the Business Association to develop an exterior design that fits within the community.

[66] Upon questioning by the Board with respect to the petition expressing support for the proposed development, the Respondent explained that random individuals on Whyte Avenue were approached. If they worked on the Whyte Avenue area, or resided in the area, the development was explained to them, after which they were presented an opportunity to sign the petition in support of the development. The same petition was made available online.

x) Rebuttal of Appellant 1, Mr. A. Joyce

[67] Mr. Joyce explained that when he obtained the signatures for the petition in opposition to the development, he presented the information in an objective manner, explained the

proposed business, and invited the individual to view the company's website and visit the location. There was no attempt to influence opinions. He observed that the Respondent's online petition could have been signed by any individual.

- [68] He reiterated his concern about the ripple effect of the pawn shop upon the community. He is not concerned about what occurs inside the store, but what happens in the immediate neighbourhood.
- [69] He disagreed with Mr. Latimer's submission that stolen goods make up 0.25% of the pawn shop's inventory. He referred to the company's financial statement, which showed a seizure rate of 0.6% in 2015, and 0.8% year-to-date.

xi) Rebuttal of Appellant 2, Old Strathcona Business Association

- [70] In response to the Development Officer's submissions, it was the Appellant 2's view that the perception of pawn shops should have been a factor for consideration when the Development Officer exercised his discretion to approve the subject development.
- [71] Whyte Avenue is marketed as a tourist attraction. Even if the Respondent were prepared to work with Appellant 2 on its signage, windows, and exterior design, Appellant 2 still would not support the development because, in its view, a pawn shop is neither a tourist destination, nor does it give the impression of safety.
- [72] Finally, it was Appellant 2's view that the Development Officer erred in noting that the WAM Development partnership with Wheaton Investments to redevelop land in the area was still preliminary had not received rezoning approval yet. The proposed redevelopment will have a huge impact on investors and investment in the area.

Decision

- [73] The appeals are DENIED, and the decision of the Development Authority is CONFIRMED. The development is GRANTED as approved by the Development Authority.

Reasons for Decision

- [74] The proposed development is a Pawn Store, which is to be located on Whyte Avenue within the CB2 General Business Zone. Pawn Stores are a Discretionary Use within this Zone. The proposed development is subject to the Pedestrian Commercial Shopping Street Overlay and the Whyte Avenue Commercial Overlay. It complies in all respects with both these overlays as well as all the development regulations in the *Edmonton Zoning Bylaw*.

- [75] The Development Officer exercised his discretion and issued a Development Permit. He reasoned that this development would be reasonably compatible with surrounding developments because:
- i) it complies with all development regulations and applicable overlays;
 - ii) the Strathcona Area Redevelopment Plan (the “ARP”) states that the area is to accommodate a broad range of commercial businesses and does not explicitly discourage Pawn Stores;
 - iii) he was not convinced that there was sufficient planning based evidence showing that Pawn Stores have a consistent and categorically negative impact on the surrounding area; and
 - iv) the fact that Council chose not to apply the Secondhand Stores and Pawn Stores Overlay to this area indicated that Council did not consider that Pawn Stores were likely to have a negative impact in the area.
- [76] There is significant opposition in the neighbourhood to the Pawn Store. Two appeals of the Development Officer’s decision were launched. One of these appeals was commenced by Mr. A. Joyce, the owner of a condominium unit in a nearby condo development (Appellant 1). The other appeal was started by the Old Strathcona Business Association (Appellant 2). In addition a number of other affected parties made written and/or verbal submissions against the development. These parties included the Varscona Hotel, WAM Development Group (which is involved in a joint venture to develop property in the neighbourhood owned by Wheaton Investments Ltd.), Don Wheaton Chevrolet Buick GMC Cadillac Ltd., which operates a business nearby, as well as a number of individuals who own property and live in the area.
- [77] Appellant 1 presented a petition that had been signed by a number of residents and business persons who live or work in the neighbourhood. The petition indicates there is a significant amount of theft in the area and a Pawn Store “would add convenience for the thief”. It also states that the development would have a negative impact on the pedestrian experience, that it was “a participant in social and financial dysfunction” and did not support a healthy lifestyle.
- [78] The Board heard no convincing evidence that the Pawn Store would have a negative impact on the pedestrian experience, that it would contribute to social or financial dysfunction or that it would not support a healthy lifestyle.
- [79] With respect to the argument that the Pawn Store would add convenience for thieves, the Board rejects this argument. The Board accepts the evidence of the Respondent that the pawn shop business is heavily regulated. All transactions must be recorded and reported to the Edmonton Police Service. People pawning goods must present two types of government-issued ID and give their names, addresses and telephone numbers. The Board also accepts the evidence of the Respondent that less than one percent of the goods they handle turn out to be stolen. The Board is of the view that thieves are much more likely to try to dispose of stolen goods in other ways, such as online, as opposed to dealing with a Pawn Store with the associated laws and regulations governing them.

- [80] Appellant 1 indicated that he had observed an increase in incidents involving transient or indigent individuals in the area, with particular problems around the strip mall where the proposed Pawn Store would be located. He felt that locating the Pawn Store in an area where there were already problems would exacerbate the situation. In support of this he relied on a number of studies purporting to show that certain types of businesses, including pawn shops, attract crime. Appellant 2 also relied on those studies. Copies of three of those studies were submitted to the Board as part of Appellant 2's written submissions.
- [81] As was acknowledged by Appellant 2, these studies have many limitations, including limited sample sizes and the fact they were conducted in particular neighbourhoods in cities, such as Chicago, which are probably not reflective of the neighbourhood around Whyte Avenue. Also, the studies tend to lump pawn shops in with many other businesses that deal with cash, such as gas stations, bars, barber shops, laundromats, hair salons, night clubs and fast food restaurants. Many of these businesses would be classified as Permitted Uses in this Zone and, in the absence of variances, would be entitled to development permits as a matter of right. Appellant 2 acknowledged that the entire shopping and entertainment district along this stretch of Whyte Avenue would be classified as a "crime attractor". Given this, the Board finds there is no basis for singling out this proposed Pawn Store as an undesirable development simply on the basis that it might attract crime when so many other types of development may be crime attractors.
- [82] Appellant 2 produced some documents that contained crime statistics for the area and contended that these statistics showed that crime in the area was increasing. The Board finds that the statistics do not show any trend in crime rate. Further, since these statistics were not related in any way to the proposed type of development, the Board does not find them helpful.
- [83] Appellant 1 referred to the ARP to support his position that the Pawn Store is not an appropriate development in this area. Appellant 1 referred to the statement that "the Strathcona neighbourhood is a key area where change needs to be carefully managed and leveraged to sustain its future prosperity, attractiveness and livability." He also referred to Goal 1 of the ARP: "Preserve the existing character and structure of the community, by retaining its residential and commercial functions and its historic qualities" as well as Goal 4: "Maintain existing commercial areas, and encourage reinvestment in these areas, recognizing some of the physical restraints and the need to be sensitive to surrounding residential communities." He pointed out that Whyte Avenue is a unique shopping area and a pawn shop is not congruent with the commercial activity already there.
- [84] The Board does not agree that these provisions of the ARP indicate a desire to exclude developments such as Pawn Stores. The language of the ARP is inclusive rather than exclusive. Goal 3 is to maintain a diversity of housing types to provide opportunity for people of different age groups, lifestyles and incomes to live in the community. Whyte Avenue Commercial Objective 1 states: "Promote diversity, uniqueness and a full range of businesses and services for all residents and visitors to the area, while maintaining the

compatible mix of business currently existing in the Whyte Avenue Commercial Area.” These goals and objectives indicate a desire to make Whyte Avenue an area that is welcoming to people from a wide range of socio-economic groups with businesses and services catering to them all, so long as the businesses are compatible with the businesses currently existing in the area.

- [85] The Board finds that this Pawn Store will promote diversity. It will cater to the needs of people who, for one reason or another, are in need of short term loans for amounts that typical lending institutions would not be bothered with. Although Appellant 1 characterized the pawn shop business as “predatory”, the Board takes the view that Pawn Stores provide a service to a segment of society that has limited options for procuring money quickly, money that is often needed to pay for necessities.
- [86] The Pawn Store will also promote uniqueness. The Board accepts the evidence of the Respondent that there is a wide variety of goods available at its outlets that is of interest to everyone from bargain hunters to collectors. Many patrons of the area may find browsing the store to be an interesting experience, similar to the experience of browsing through the existing second-hand and consignment stores in the area.
- [87] Regarding the compatibility of this Pawn Store with its immediate surroundings, it will be located in a strip mall. The part of the strip mall where the Pawn Store will be located is separated from the avenue and the sidewalk by a parking lot. The Board is of the view that this buffer between the Pawn Store and pedestrian traffic on the sidewalk will alleviate the concerns of those pedestrians who may be uncomfortable being near a pawn shop.
- [88] The other tenants in the strip mall are a Mac’s Convenience Store, Checkers Pizza, a UPS outlet and a Subway restaurant. All of these tenants except Checkers Pizza support the Pawn Store as a new tenant. The Board is of the opinion that the Pawn Store will be compatible with the other tenants of the strip mall.
- [89] This location in the strip mall was formerly occupied by a video store. It has been vacant for a number of years. This vacancy may be contributing to the problems with transients in the immediate area that some of the affected parties were concerned about. The Board finds that the Pawn Store will not increase the problem with transients because it will not cater to them, as transients typically lack the necessary ID and fixed address the Pawn Store requires to transact with them. The Board believes that filling the vacancy in the strip mall with this Pawn Store will increase the vibrancy for which the area is known.
- [90] Ms. Stenzel, who is a real estate agent living nearby, presented several real estate listings of properties that she said were located near pawn shops. She took the position that these listings demonstrated that properties near pawn shops either do not sell or sell for significantly less than similar properties not located near pawn shops. The Board does not find this evidence compelling. A much more rigorous analysis would be required to demonstrate a correlation between property values and the proximity to Pawn Stores.

- [91] Ms. Stenzel also spoke about a client who refused to buy a property because of its proximity to a pawn shop. The Board accepts that certain individuals will choose not to live near Pawn Stores, just as some will chose not to live near schools, convenience stores, railroad tracks or any number of other types of development they find objectionable. However, there are also individuals who do choose to live in neighbourhoods with Pawn Stores, so the anecdote about this one individual does not assist the Board in deciding the matter before it.
- [92] It was contended by Ms. Stenzel that the Pawn Store would contribute to congestion in the alley, which was already congested. The Board accepts the evidence of the Respondent that its customers would be using the front entrance to the store.
- [93] Another concern raised by affected parties was that the appearance of the proposed Pawn Store, with barred windows and window coverings that did not comply with the Pedestrian Commercial Shopping Street Overlay, would create a negative impression. However, the Respondent indicated that it was exploring options for security measures that would not be visible during business hours and that it would comply with the Overlay.
- [94] One concern shared by the Appellants, and many of those who appeared in opposition to the proposed development, was that a lot of work has gone into transforming this stretch of Whyte Avenue from what could be described as a seedy area into the vibrant and prosperous area it is today. The feeling expressed was that allowing Pawn Stores in the area would be a step backward; that they have a negative image associated with economic decline and decay; that, even if Pawn Stores do not actually attract crime, their reputation is such that the presence of one would deter people from visiting the area.
- [95] This is a legitimate concern; perception is important. The Board recognizes that some people do have negative impressions of Pawn Stores. However, those views are not universally held. Appellant 1 advised that not all the condo owners he approached would sign his petition. Appellant 2 confirmed that not all members of Old Strathcona Business Association supported the position the Association was taking in this appeal. The Respondent presented a petition signed by a number of people who live and work in the area who were supportive of a Pawn Store at the proposed location. The Respondent also presented testimonials from individuals who had used the services of the Respondent to either procure money when they needed it or to purchase goods at affordable prices. The Board finds that not everyone has a negative view of the pawn shop business and many have a positive view.
- [96] The Board finds a Pawn Store in this particular strip mall, with the type of tenants currently there and separated from the sidewalk by a parking lot, will not have the negative impact those opposed to the development fear. Further, the progress that has been made in transforming Whyte Avenue into the vibrant entertainment and shopping district it is today weighs in favour of the area being able to absorb this Pawn Shop without undue negative impacts to the developments around it. The neighbourhood is

now a very desirable place to be to the extent that even those who have negative feelings about Pawn Stores are unlikely to be deterred from being in the neighbourhood because of the presence of this Pawn Store.

- [97] Also, the Board notes that public attitudes are subject to change over time. People on both sides of this matter pointed out that tattoo parlours used to have a negative image, but tattoos are now more socially acceptable and the tattoo parlours in the area add to the vibrancy and diversity of the neighbourhood. With the federal government's stated goal of legalizing marijuana, a similar change in attitude is happening with shops selling marijuana paraphernalia and these shops on Whyte Avenue are more widely accepted than they once were.
- [98] Whether this happens with this Pawn Store remains to be seen but it is a possibility. The Respondent has been in business for 30 years and has at least 15 stores and over 200 employees. It describes itself as a modern pawn shop operator whose stores are quite different from what it calls the old-style of pawn shop. The photographs of the interior of an existing store show what the Board finds to be a clean, bright, open, attractive layout, not unlike many retail stores. There are no bars or glass separating employees from customers. Appellant 1 indicated that he was impressed with the operation when he took a tour of one of the Respondent's stores and he acknowledged that the Respondent was working hard to improve the image of Pawn Stores.
- [99] For all of the above reasons, the Board concludes that a Pawn Shop at this location will be reasonably compatible with the surrounding development, will not detract from the character or vibrancy of the district or cause any significant adverse interference with the amenities of the neighbourhood or the use, enjoyment or value of neighbouring parcels of land. Accordingly, the Board exercises its discretion to confirm the decision of the Development Officer to issue a development permit.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

Mr. L. Pratt; Mr. R. Hachigian; Ms. K. Thind; Ms. C. Weremczuk

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3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



**EDMONTON
TRIBUNALS**

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Date: August 12, 2016
Project Number: 183954797-002
File Number: SDAB-D-16-182

Notice of Decision

- [1] On July 28, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 29, 2016. The appeal concerned the decision of the Development Authority, issued on June 15, 2016, to refuse the following development:

To install (1) Freestanding Minor Digital On-premises Sign (Alberta Motor Association)

- [2] The subject property is on Plan 9422746 Blk F Lot 9, located at 10310 - G A Macdonald Avenue NW, within the DC2.345 Site Specific Development Control Provision. The Major Commercial Corridors Overlay applies to the subject property.

- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:

- Copy of the Development Permit application with attachments, proposed plans, correspondence between the Development Authority and Transportation, and the refused Development Permit;
- Copy of the Registered Mail receipt confirming delivery of the refusal decision, signed and dated June 20, 2016;
- Development Officer's written submissions, received July 13, 2016; and
- Written submissions of the Appellant 1, submitted via email on July 22, 2016.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the Municipal Government Act, RSA 2000, c M-26.

Summary of Hearing

i) *Position of the Appellant, Alberta Motor Association (“AMA”)*

- [7] The Appellant was represented by legal counsel, Mr. A. Ng, who was accompanied by Mr. K. Klatchuk.
- [8] Mr. Ng acknowledged that the subject Sign has been existing without a permit for nine years, and that AMA should have applied for a Sign permit in 2007. At that time, the *Edmonton Zoning Bylaw* restricted the maximum Height of Freestanding Signs to eight metres, but also provided the Development Officer with variance powers to allow Freestanding Signs of up to 10 metres in Height.
- [9] As the *Edmonton Zoning Bylaw 12800* currently reads, it would appear that the Development Officer has no authority to vary Height, pursuant to Section 11.4(2). However, Mr. Ng noted that the subject development falls under DC2.345, which was passed on May 16, 1994. Under this Site Specific Development Control Provision, Section DC2.345.4(h) provides that “The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79.” Section 79 of the land use bylaw in effect at the time that DC2.345 was passed was the *Land Use Bylaw 5996* (“LUB 5996”). Section 79 of the LUB 5996 included Schedule 79D, pertaining to the Height regulations that govern Freestanding Signs. Accordingly, Mr. Ng submitted that throughout DC2.345 and the LUB 5996, it would appear that the ability to vary the regulations governing the maximum Height of a Freestanding Sign is contemplated.
- [10] Mr. Klatchuk then reviewed the various factors that the Development Officer should have considered. It was the Appellant’s submission that had these factors been considered, the Development Officer should have exercised his discretionary powers under LUB 5996 and DC2.345 and grant a variance to the maximum allowable Height for a Freestanding sign.
- [11] Mr. Klatchuk referred to Exhibit “B”, a series of photographs of surrounding commercial developments with Freestanding Signs. He noted that these signs were often taller than the Appellant’s Sign. One photograph of the subject Sign showed that from certain angles, the Appellant’s Sign is not viewable due to tree coverage. Mr. Klatchuk submitted that based on the photographic evidence, the subject Sign is consistent with the visual design of other Freestanding Sign developments in the area.
- [12] Upon questioning by the Board, Mr. Ng confirmed that the Appellant has no objections to the Development Officer’s recommended condition, should the Board grant the development permit, of a message hold time of 30 seconds or greater. He explained that the Sign is a text-only, ticker-style sign, advertising only services provided by AMA.

ii) Position of the Development Officer, Mr. S. Ahuja

[13] Mr. Ahuja was unable to attend the hearing.

Decision

[14] The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:

- 1) The permit shall be approved for a term of no longer than 5 years, at which time the applicant shall apply for a new development permit for continued operation of the sign.
- 2) The Copy on the Sign shall change no more frequently than every 30 seconds.
- 3) If at any time Transportation Planning and Engineering determine that the sign face contributes to safety concerns, the owner/applicant must immediately address the safety concerns identified by removing the sign, de-energizing the sign, changing the message conveyed on the sign, and or address the concern in another manner acceptable to Transportation Planning and Engineering.
- 4) The owner/applicant must provide a written statement of the actions taken to mitigate concerns identified by Transportation Planning and Engineering within 30 days of the notification of the safety concern. Failure to provide corrective action will result in the requirement to immediately remove or de-energize the sign.
- 5) The proposed sign shall be constructed entirely within private property. No portion of the sign shall encroach over/into road right-of-way.

Advisement:

- 1) Should the Applicant wish to display video or any form of moving images on the sign, a new Development Application for a major digital sign will be required. At that time, Transportation Planning and Engineering will require a safety review of the sign prior to responding to the application.

[15] In granting the development, the following variance is allowed:

- 1) Section 79D.2(1)(c) of *Land Use Bylaw 5996* is varied to permit an excess of 0.99 metres to the maximum allowable Height of 8.0 metres for a Freestanding Sign, for a total Height of 8.99 metres.

Reasons for Decision

[16] Because the proposed development is in a direct control district, the discretion of the Board is constrained by the provisions of Section 641(4)(b) of the *Municipal Government Act*, which reads:

641(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

...

(b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

[17] The Board must first determine if the Development Officer followed the directions of Council when he refused to grant a development permit for this Sign. In this case the Development Officer considered Section DC2.345 of the *Edmonton Zoning Bylaw*, which governs development in this direct control district.

[18] Although Freestanding Signs are not a listed Use in this district, Section DC2.345.4(i) states:

DC2.345.4(i) Signs may be allowed in this District as provided in Schedule 79D and in accordance with the general provisions of Section 79.1 to 79.9, inclusive of the Land Use Bylaw.

[19] The Development Officer concluded, correctly in the opinion of the Board, that Signs are allowed in this district and are subject to the provisions of the land use bylaw (LUB 5996) in effect prior to the enactment of the current *Edmonton Zoning Bylaw*.

[20] He also correctly concluded that Section 79D.2(1)(c) limits the height of a Freestanding Sign on a Site like this one to 8.0 metres and that the proposed Sign is 8.99 metres high.

[21] However, the Development Officer went on to conclude that the provisions of Section 11.6(2) of LUB 5996 did not allow him to grant a variance with respect to Height. His

reasons for refusal also referenced Section 11.4(2) of *Edmonton Zoning Bylaw 12800*, which prohibits a Development Officer from granting a variance to Height. On this basis, he refused to issue a development permit.

[22] The Development Officer failed to consider Section DC2.345.4(h), which reads:

DC2.345.4(h) The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79, and the provisions of this District with the exception of Clauses 4(a) and 4(b), if in his opinion such a variance would be in keeping with the General Purpose of this District and would not affect the privacy, amenities, use and enjoyment of the neighbouring properties.

[23] This section explicitly gives the Development Officer the discretion to allow variances to Section 79 of LUB 5996 in this district and overrides the general prohibition contained in Section 11.6(2). By failing to consider that variance power, the Development Officer did not follow the directions of Council and the Board concludes that it has the jurisdiction to substitute its decision for the Development Officer's decision to ensure that Council's directions are followed.

[24] Section DC2.345.4(h) states that variances may be allowed if, among other things, such a variance would be in keeping with the General Purpose of this District.

[25] The General Purpose of the District is:

DC2.345.1 To establish a Site Specific Development Control District for an office building and highway commercial uses with an increased building height and floor area ratio for the office component over that permitted by the CHY District, and with landscaping and setback requirements to implement the appearance objectives of the Calgary Trail Land Use Study and the Major Commercial Corridor Overlay.

[26] The Board notes that this district was created to allow, among other things, an increased building Height. Accordingly, allowing a variance to Sign Height would not necessarily be contrary to the General Purpose of the district.

[27] The General Purpose also references the appearance objectives of the Major Commercial Corridor Overlay. The only mention of Signs in that Overlay is Section 12, which states that power services to Signs shall be underground. The proposed Sign complies with that requirement.

[28] The General Purpose of the district also makes reference to the appearance objectives of the Calgary Trail Land Use Study. With respect to Signs, the Study references design policies to improve signage in the area by promoting the voluntary replacement of older advertising signage, which is perceived by many to be unattractive, and discouraging the use of portable signs and free-standing billboards (Section 3.4). In Zone 2, where the

proposed Sign is located, the urban design objectives include encouraging industrial and commercial buildings which abut the highway to locate signs so they are visible from Calgary Trail (Map 8).

- [29] In the opinion of the Board, the proposed Sign complies with the Calgary Trail Land Use Study. It is visible from the highway and it has a modern, attractive design. Nothing in the Study indicates that variances to Sign heights should not be allowed.
- [30] The Board concludes that granting a variance to the Height of this Sign is in keeping with the General Purpose of this District.
- [31] Section DC2.345.4(h) also states that variances may be allowed if they would not affect the privacy, amenities, use and enjoyment of the neighbouring properties.
- [32] The Board notes that this Sign has been in existence for nine years with no reported complaints. There are a number of signs nearby that are higher than the proposed sign. The size of the variance required is only 0.99 metres. In the context of the neighbourhood, this variance in height will not result in a Sign that is out of character. No one presented any written or oral objection to the variance. For these reasons, the Board is of the opinion that the variance will not affect the privacy, amenities, use and enjoyment of the neighbouring properties.
- [33] Accordingly, the criteria set out in Section DC2.345.4(h) regarding the granting of variances are satisfied and it is appropriate to grant the variance in Height of 0.99 metres. Further, the Board is of the opinion that this development with the variance has not and will not unduly interfere with the amenities of the neighbourhood, nor has it or will it materially interfere or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. M. Young, Presiding Officer
Subdivision and Development Appeal Board

Board Members in Attendance:

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