

Smith, Theresa L.

From: Planning & Development BCA [planning@mybowness.com]
Sent: Wednesday, June 22, 2016 3:21 PM
To: City Clerk
Subject: Submission for LOC2015-0137 (Public Hearing on July 4, 2016)
Attachments: BCA Submission to City Clerk (LOC2015-0137).pdf

Dear City Clerk,

Please find the attached submission for LOC2015-0137 that will be discussed at the City Council on Monday, July 4, 2016.

Thank you,

Tracy Tsui
Planning and Development Assistant



Planning & Development Committee
Bowness Community Association
7904 - 43 Ave NW, Calgary, AB, T3B 4P9

403-288-8300
planning@mybowness.com

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2016 JUN 22 PM 3:34
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June 22, 2016

City Clerk's Office
Mail Code #8007
P.O. Box 2100, Station M
Calgary, AB, T2P 2M5

Dear City Clerk,

Re: Submission for LOC2015-0137 (land use amendment to accommodate office, retail, and beverage container drop-off depot at 60 Bowridge Drive NW) for City Council Public Hearing on July 4, 2016

The Bowness Community Association (BCA) appealed the Development Authority's approval of a new bottle return depot in September 2010 and May 2015, and is surprised that it is compelled to do so again. Very little in the proposal has changed. To summarize, the Bowness Community Association, along with the businesses located in this area is in opposition of the development of a bottle depot at this location for the following reasons:

- Proximity to residential homes and two hotels creates industrial noise and air pollution concerns.
- A bottle depot is not compatible with existing businesses in the area and a majority of the businesses in the area oppose the application.
- Major parking and traffic issues, and Trans-Canada/Bowfort Road Interchange and new traffic circle construction implications are unclear.
- Development on the escarpment is not supported in the *Objectives* of Highway Commercial development in the Bowness Area Redevelopment Plan (ARP), and Bylaw DC92Z95.
- Bowness is currently well-served by three bottle depots approximately 5-10 minutes travel time, Crowfoot Bottle Depot, Vecova Bottle Depot, and Bowness Bottle Depot.

Relevant Statutory Policy/Regulations

The application does not comply with DC Bylaw 92Z95, the Bowness Area Redevelopment Plan (ARP), and Calgary's Land Use Bylaws 2P80 and 1P2007.

1. DC Bylaw 92Z95 2(a) states that “new development including parking and outside storage shall have a minimum set back of 60 feet from the top of the escarpment.” Page 59 of the Bowness ARP, Policies – Highway Commercial 3 also states that “new development (including parking/storage) referred to in Policy #2 should be set back from the escarpment at least to the minimum stated in the Calgary General Municipal Plan (60 feet).” The proposed development as shown will encroach on the 60 feet with parking stalls.
2. Page 57 of the Bowness ARP, Objectives – Highway Commercial 2 states: “Integrate the land uses in this area with those to the west and south and de-emphasize linkages to the rest of Bowness.” Conversely, the Beverage Container Management Board (BCMB) requires a 3 km radius to ensure convenient accessibility for customers. This 3 km radius extends beyond the community and therefore, this location would unquestionably provide a direct linkage to the entire community of Bowness.
3. Page 59 of Bowness ARP, Policies – Highway Commercial 1 states that “uses that provide service to the travelling public from the Trans-Canada Highway are to be supported”. A bottle depot is not a business that supports the travelling public but rather is a predominately auto centred use supported by local area population.
4. Page 59 of Bowness ARP, Policies – Highway Commercial 3 states that “any new development should not be a prominent feature when viewed from the valley floor.” With the addition of the second floor the building will certainly be visible from the valley floor.
5. Pursuant to Section 18(3) of Land Use Bylaw 2P80, the parking requirement is 5.5 stalls/93 m² of NFA for bottle depot and retail uses, and 1 stall/46 m² of NFA for office space. This equates to a total of 68 parking stalls required. Plans indicate 25 proposed stalls, meaning 43 stalls deficient and a relaxation of 63%.

Traffic Concerns

1. Traffic patterns in the vicinity will undergo changes as major re-configuration will occur with the completion of the Trans-Canada Highway/Bowfort Road Interchange and 83 St improvements. Presently, some of the commercial areas have access via Bowridge Crescent NW, but when the interchange is built, that access will be closed off. All access throughout the entire area will be from Bowfort Road to Bowridge Drive which will dead end and require a turn-around for vehicles needing to exit the area.
2. Located directly across from the proposed development is a very busy 4 star hotel that generates traffic throughout the day with higher volumes on weekends. Located one parcel over from the proposed development is a church that has peak traffic demands on the weekend coinciding with the bottle depot peak demand. Given the changes that will occur due to the new interchange alignment, discussions about this proposal should reflect this.
3. Vehicular travel times in Bowness range from 4-8 minutes to the Bowness Bottle Depot and 10-13 minutes to the Crowfoot Bottle Depot Ltd. None of these travel times are excessive and the proposed location would better travel times marginally for only those residents in the northwest region of the community. Perhaps those residents in Valley Ridge would see a reduced travel time, but all other new communities located to the north and further south would not benefit at all.

Environmental Concerns

1. A slope stability analysis for the escarpment slope located at the north portion of the property located at 36 Bowridge Drive NW located immediately east of the DP under discussion was completed in January 2014. One of the conclusions of this report is as follows: "To maintain stable conditions, management of surface water is imperative. Surface runoff near and adjacent to the slope should not be allowed to flow over the top-of-bank in a concentrated manner. All roof water discharge, parking lots and landscaping should be designed such that all surface water is collected within the stormwater sewer system. Should areas of concentrated surface runoff develop due to development activities, these areas should be suitably protected by appropriate erosion control techniques such as riprap, erosion matting etc." Our concern is the accumulation of runoff when more vacant sites are developed on the top of the escarpment. The accumulation of runoff will be much greater than one site as investigated in the report. As well, although the plans for the proposed development are not detailed enough to provide stormwater runoff collection, it would be imperative that the runoff is collected on site with immediate release into the stormwater sewer system that is most often located on the street. It will be crucial that residential properties located below the escarpment are protected from any slope instability caused by potential development on the top of the escarpment.
2. Page 57 of the ARP also states that "The area adjacent to the escarpment could have substantial negative impacts on the escarpment if care is not taken with new development. Increased runoff, reduction in normal moisture infiltration (which supplies plant life on the slope itself), and visual blight are all potential threats to the stability and health of the escarpment." Proximity to residential homes, two hotels, and escarpment creates industrial noise, odour, and air pollution concerns.

Social and Privacy Issues

1. Letters from the Montgomery Community Association and the Montgomery BRZ detail very specific concerns that they have with the Bowness Bottle Depot located on the Trans-Canada Highway involving both neighbouring residences and businesses. The most appropriate land uses for these facilities should be contained in industrial districts and away from residences.
2. The proposed development's second floor has windows that look out onto the escarpment and directly into the residential properties located on 33 Avenue that back onto the escarpment. Residents along the street have concerns with privacy issues that will arise.

Other

1. In a letter dated February 10, 2015 from Kenneth Melanson, Senior Planner with the City of Calgary, advising that the Development Authority has approved the development permit, there is a comment that the area under consideration is zoned as Highway Commercial DC. He states that "the ARP should consider uses that exclude automotive use. A bottle depot is one such use in the former C-6 district and this ARP supports its consideration." There will in all likelihood be several dozen uses that are not automotive uses, but will not be appropriate uses at this site.
2. Report M-2014-022 recommended changes to the C-COR3 District to make bottle depots a permitted use in existing buildings in this district. Mr. Melanson writes "The Land Use Transition Strategy from Bylaw 2P80 to Bylaw 1P2007 would have designated this site C-COR3 had there not

been specific site constraints due to the top of bank.” This site is zoned under 2P80 as a DC and will remain a DC. Therefore the above does not apply for consideration in this matter. As such, a bottle depot use is a discretionary use and not a permitted use per Council’s direction on M-2014-022 on C-COR3 land use districts.

3. The Beverage Container Management Board (BCMB) maintains a population standard of 1 bottle depot per 40,000 residents. Bowness with currently a population of 11,235 (2015 Civic Census Results) is well-serviced by 3 bottle depots (Crowfoot Bottle Depot, Vecova Bottle Depot, and Bowness Bottle Depot) within approximately 12 km radius. The 2015 Civic Census Results also indicates a population decrease in Bowness (-1% to -5%) between 2014 and 2015. Therefore having another bottle depot is not necessary. Instead, bottle depots should be located in areas experiencing the greatest population growth and lack a bottle depot, namely communities in northeast and southeast Calgary that are experiencing population increases with new communities and have much industrial land.

Conclusion

The Bowness Community Association on behalf of its members and all residents of the community of Bowness has appealed a proposal for a bottle depot at this location previously in 2010 and 2015. As very little has changed with respect to the proposed development, we find ourselves in the same position again. This area of Highway Commercial will be hugely impacted by the forthcoming Trans-Canada Highway/Bowfort Road Interchange and improvements on 83 Street, and future traffic patterns are unknown at this time.

For the reasons listed above, the BCA does not support this land use amendment application (LOC2015-0137) and asks that any land use amendment or development proposal at this location remain consistent with the existing policies that are most appropriate and sensitive to the rest of the community.

Thank you for your time and consideration.

Sincerely,

Bowness Community Association

1447743 ALBERTA LTD.

#12 2835 37 street S.W.
Calgary, Alberta
T3E3B3
Ph: 403 217-7838

Date: 2016-03-30

Mr. Duncan Meade & Board of Directors
President
Bowness Community Association
7904 - 43 Avenue N.W.
Calgary, Alberta
T3B 4P9

RECEIVED
2016 MAY 19 PM 2:16
THE CITY OF CALGARY
CITY CLERKS

Re: LOC2015-0137 – 60 Bowridge Drive NW

Dear Sir:

On the evening of February 3, 2016 my team of consultants an architect, public relations and a transportation engineer attended the Bowness Planning and Development Committee meeting. They presented the new Land Use Reclassification for the property at 60 Bowridge Drive NW that is being proposed for 3 different types of uses- retail stores, a bottle depot and offices on the second floor.

A full color hand-out booklet was provided to everyone in attendance which included the building elevation, the site plan, and the parking layout. A transportation engineer also talked about the traffic generation expected for this proposed development project.

Unfortunately, the question and answer period turned into a free-for-all with many people speaking at once, several people demanding that the Land Use application be withdrawn and 2 people walking out of this meeting and throwing down the reports that we had handed out. Several people questioned why we were coming back with another application since this application, which was previously a Development Permit and not a Land Use, had lost twice at the SDAB?

The fact of the matter is that this new Land Use application has decreased the size of the building, reduced the number of parking stalls and 70% of the land area of 2.64 acres will be left in a natural green open space. Therefore, in our opinion, this new Land Use application is much improved over previous applications and there are no relaxations being requested.

Finally, the Bowness Community Association had agreed to hold a Public Open House in their building on February 17, 2016. However, on the same night as the meeting (February 3, 2016) our rental commitment and cheque for \$300 was returned with the statement that "we cannot hold your Open House in this Bowness Community Centre because people will think that we support it, and we do not support it".

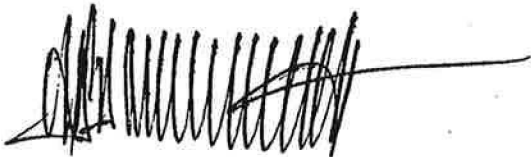
1447743 ALBERTA LTD.

#12 2835 37 street S.W.
Calgary, Alberta
T3E3B3
Ph: 403 217-7838

In a democracy, it is imperative that all voices be heard and that different opinions are listened to, understood and respected and I am disappointed that this did not happen at the February 3, 2016 at the Bowness Planning & Development Committee.

My hope is that in the future, any meeting with the Bowness Planning & Development Committee will be more orderly and a higher degree of respect will be shown by all members.

Regards,

A handwritten signature in black ink, appearing to read 'Kulwant Dhillon', followed by a long horizontal line extending to the right.

Kulwant Dhillon P.Eng.
President

Cc: Councillor Mr. Ward Sutherland

Albrecht, Linda

From: Jo Ackerman [hanamera@shaw.ca]
Sent: Wednesday, June 22, 2016 12:29 PM
To: City Clerk
Subject: Redesignation of land Bowness Bylaw 176D2016-plan 5565AH, Block 46, Lot 27

To Whom It May Concern,

Regarding the proposal to redesignate the land located at 60 Bowridge Drive NW, (Plan 5565AH, Block 46, Lot 27) from DC Direct Control District to DC Direct Control District to accommodate office, retail and beverage container drop-off depot.

I live at 8003 33 Ave NW, which on you map is 12 5565AH, if you look you will see it backs directly on to the proposed site.

My husband and I STRONGLY OPPOSE, this proposal, for all the reasons we have opposed all the other attempts to allow a bottle depot to be positioned on this site. Let me re-fresh your memory as to what these concerns are.

1. NOISE!! Firstly with all the construction work if it goes ahead, we already had to put up with the nightmare of the storage building which got permission to go up, but imagine if you will a beautiful sunny afternoon, and you are out on your deck. you want to relax and enjoy some down time, and all you can hear is the clinking, clanking, and clattering of bottles, cans and other "beverage containers".

2. NOISE and TRAFFIC CONGESTION!! There will inevitably be an increase in traffic. We as local residents are looking forward to the day when Bowfort Road is re open, however if you allow this bottle depot business, traffic will increase, not only cars, but also larger vehicle, trucks and the like, which will be needed to service the depot. This could have a knock on effect to other local roads.

3. SMELL!!!!!! We've all used bottle depots and we've all held our breath while we've been doing so. Imagine that smell wafting over your back yard, while you're out there trying to read a book, or doing some gardening!!

4. Alcohol abuse, many of the people who use the bottle depot, as a source of income have an alcohol dependency, there are two Liquor stores in the local proximity.

5. Increased risk of FIRE in the wooded area between our Lot and the proposed site. From time to time we have homeless people who camp in the woods, we are concerned that the number of these might increase, as many homeless people use the bottle depot as a source of income. Actually suppressing a fire if it were to start in that area would be difficult because of access, and we have all seen recently how quickly a fire can spread, get out of control and put people and homes at risk.

6. Negative impact on the local businesses already operating, for instance I can't imagine visitors to Calgary who choose to stay at one of the two hotels on Bowfort Road, will get a very good 1st impression of Calgary if they're next door to a bottle depot, for all the reasons the residents don't want it, and will probably not choose to stay in this location again.

7. Negative effect on our house prices, it will make it harder to sell our property if people buying are concerned with any of the items I have listed above. I would hope that there would be a considerable amount of financial compensation paid to us and other residents if, the nightmare becomes reality and this proposal is approved.

I could go on and on, but I will leave it at that.

NO, NO, NO to the bottle depot in any way shape or form!!!!

Hope you get the message and do the right thing for the residents for a change!

Kindest Regards

Paul and Jo Ackerman

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2016 JUN 22 PM 12:44
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Smith, Theresa L.

From: annecampbell2@shaw.ca
Sent: Tuesday, June 21, 2016 3:55 PM
To: City Clerk
Subject: Bowness Bylaw 176D2016
Attachments: Bowness Bylaw 176D2016.doc

Please find attached our submission relative to the above Bowness Bylaw.

An acknowledgment of your receipt of this submission would be appreciated.

Thank you

Anne Campbell

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2016 JUN 21 PM 4:13
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CITY CLERK'S

7943 – 33 Avenue N.W.
Calgary, Alberta T3B 1L5

June 21, 2016

By email to cityclerk@calgary.ca

Office of the City Clerk
The City of Calgary
700 Macleod Trail SE
P.O. Box 2100, Station "M"
Calgary, AB T2P 2M5

2016 JUN 21 PM 4:13
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RECEIVED

Dear Sir

Re: Proposed Land Use Designation Amendment
60 Bowridge Drive N.W., Plan 5565 AH, Block 46, Lot 27
Bowness Bylaw 176D2016

This is to advise that we live almost directly below the proposed development and have enjoyed our property for almost 40 years. We are opposed to the building of a bottle return depot at the above address for the following reasons:

1. We do not believe a bottle depot adjacent to a residential area is good planning. Although the top of the hill is several hundred feet above us, anything built there has an impact on us because it looks and feels so close.
2. There will be noise from handling the bottles, particularly from loading them to send out. Sound carries very readily from the hill to the street below, notwithstanding what some people think or what we have been told.
3. When ascertaining the kinds of problems other bottle return depots have caused in or close to residential areas, we believe that the site will attract a number of transients. Although the official view may be that this is a social problem and not a planning concern, please take the following into account: It is a fact of life that a number of transients live from moment to moment and, having sold enough bottles, may very well cross the street to the liquor store. Next is "Where will we go to drink?" Especially in the summer, one obvious place could be the bush on the hill above us. And, as drinking and smoking often go together, there will be the danger of a fire starting. Please be advised that a number of years ago there was a small fire on the hillside. The fire trucks could not readily access the site of the fire either from 33 Avenue or from Bowridge Drive. A former resident on Bowridge told me that his biggest nightmare was that a fire would start in the bush on the hillside. We know first hand that there is a considerable amount of dry bush there and a fire would readily sweep through the area.

4. Over the many years we have lived on 33 Avenue, numerous persons have come down the hill and into the back yards of residents and we believe that allowing this development will make these visitations more numerous. We purchased our property mainly for the privacy that it afforded, but that privacy will be eroded should this development be allowed. Obviously, this could also affect the value of our property. There is also a concern for our safety when unknown persons come down the hill into our back yards.

5. As we do frequent some businesses in the area of the proposed development, we also have concerns about traffic as there really is not enough space to allow for the cars that would be trying to use Bowridge Drive.

6. As there is a bottle depot in Montgomery just 4 kilometers to the east, we do not believe a bottle depot on Bowridge Drive is needed or makes any sense.

7. In our view, Bowness is a prime residential area and this opinion is shared by so many newer residents who have discovered our community and the value of it. A bottle depot will detract from this value.

Please consider the above when making your decision.

Yours truly

Carman Campbell and Anne Campbell

Smith, Theresa L.

From: Hank van de Kuilen [hvandekuilen@ellisdon.com]
Sent: Thursday, June 16, 2016 5:48 PM
To: City Clerk
Subject: Comment Submission for Bowness Bylaw 176D2016
Attachments: 20160616182206841.pdf

Please see my comments regarding Bylaw 176D2016

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2016 JUN 17 AM 7:43
THE CITY OF CALGARY
CITY CLERK'S

--
Thank You
(Hank) Hendrik Van de Kuilen
Senior Superintendent -EllisDon
Cell - 403-828-8116
Email - hvandekuilen@ellisdon.com

This e-mail is **CONFIDENTIAL**. If you are not its intended recipient, please notify the sender and delete all copies immediately.

Bowness Bylaw 176D 2016

COMMENT FORM

For the 60 Bowridge Drive NW Land Use Proposal

For the Bottle Depot, Retail and Office Space Uses-March 7, 2016

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2016 JUN 17 AM 7:43

1 of 3
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I own the Residential Property directly below 60 Bowridge Dr NW. I have lived in Bowness 56 years and have resided below this property for 25 years. Bottle Depot should not be allowed at this location for many reasons.

- ① Owner of property should have consulted adjacent property owners before purchasing property with Bottle Depot in mind. Owner probably wouldn't have purchased property based on results.
- ② Bowness Residents do not require Bottle Depot in this area as there is already another 6 minutes away.
- ③ Bottle Depots don't belong next to Residential Areas.

Optional Name, address, email and telephone number

→ Next

COMMENT FORM

For the 60 Bowridge Drive NW Land Use Proposal

For the Bottle Depot, Retail and Office Space Uses-March 7, 2016

- ④ I would not oppose another retail or office use.
- ⑤ Escarpment needs to be made inaccessible to public.
- ⑥ Allowing Public Access to Escarpment creates a huge Risk of Fire and Insecurity to all properties beside or below.
- ⑦ Walk in Bottle Depot Clientele will very negatively impact the privacy of adjacent residential properties.
- ⑧ All north facing windows of Building need to be Frosted to protect privacy of neighbours below.

Optional-Name, address, email and telephone number



30F3

COMMENT FORM

For the 60 Bowridge Drive NW Land Use Proposal

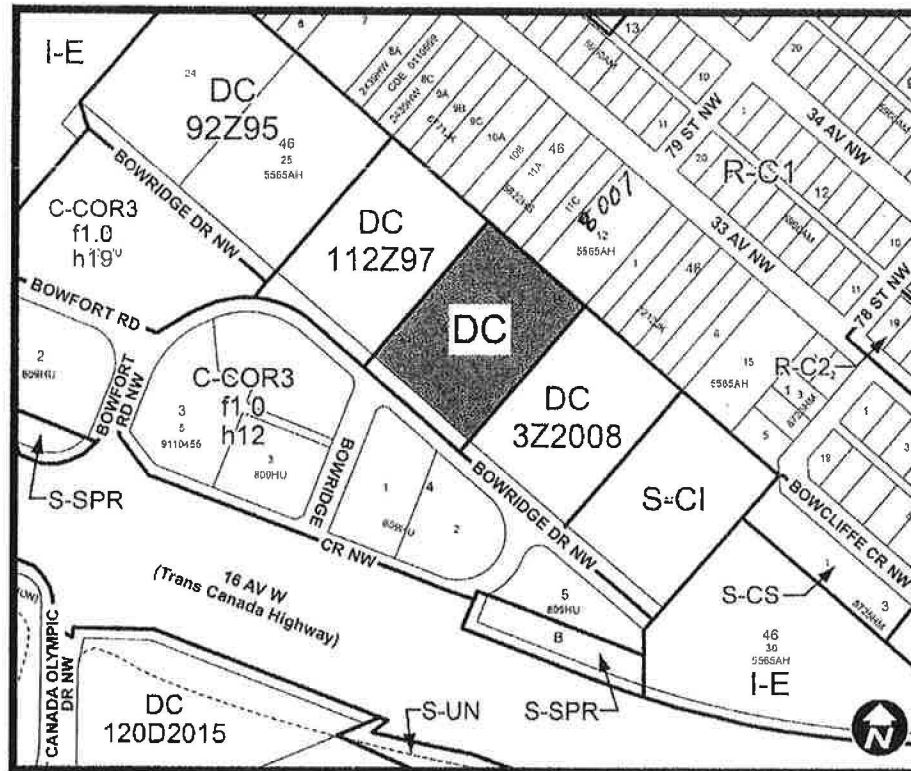
For the Bottle Depot, Retail and Office Space Uses-March 7, 2016

- ⑨ The Noise created by a Bottle Depot does not belong next to residential. Loading, Unloading, Cart stacking, Truck Honking, Truck Reverse Beeping to mention a few.
- ⑩ Above All, The Owner of this property needs to gain some respect for His Residential Neighbours and Withdraw this Bottle Depot Proposal.
- ⑪ If this Bottle Depot is allowed, It will Greatly Reduce the Value of Properties Below.

Optional-Name, address, email and telephone number

Hendrik (Hank) Vande Kuilen
403-828-8116
8007-33 Ave NW.

To redesignate the land located at 60 Bowridge Drive NW (Plan 5565AH, Block 46, Lot 27) from DC Direct Control District to DC Direct Control District to accommodate office, retail and beverage container drop-off depot.



Smith, Theresa L.

From: rkinniburgh@rockpointe.ca
Sent: Tuesday, June 21, 2016 12:15 PM
To: City Clerk
Subject: Online Submission on LOC2015-0137
Attachments: 60 Bowridge Drive.pdf

June 21, 2016

Application: LOC2015-0137

Submitted by: Ron Kinniburgh

Contact Information

Address: 255024 Lochend Road, Calgary, AB T3L 2R2

Phone: 403-851-0011

Email: rkinniburgh@rockpointe.ca

Feedback:

A letter is attached regarding the 'Land Use Change - 60 Bowridge Drive NW' Thank you

RECEIVED
2016 JUN 21 PM 1:22
THE CITY OF CALGARY
CITY CLERK'S

Land Use Change 60 Bowridge Drive NW

LOC2015-0137

INTRODUCTION

RockPointe Church, as an owner of property at 12 Bowridge Drive NW, respectfully submits our comments and concerns with respect to the application for the land use change at 60 Bowridge Drive NW.

BACKGROUND

RockPointe Church (Bowridge Site) has had a presence at 12 Bowridge Drive NW for twenty years. RockPointe has, during this time, ministered to and served not only the communities that surround our Bowridge site, but also those who have been travelling through Calgary or those visiting Canada Olympic Park (COP). We often have visitors drop in to our weekend services, from folks training at COP as well as those who have stopped for the night at either of the two hotels in the area. This fits with the current land use designation for the area (LUB 2P80 C-6 Highway Commercial) - that being development that caters to the traveling public. As well, over the years, RockPointe Church has developed relationships with a number of businesses in the area resulting in certain synergies that have benefited all concerned (like sharing parking when events occur at the hotels or at the church).

WHY A BOTTLE DEPOT?

A bottle return facility does not fit in with the types of businesses and services that are currently part of the area. The bottle return facility is better suited in a larger industrial or commercial district and represents an uncharacteristic development in the area. It would be better located in an area with easy access and significant amounts of parking. In this area a bottle depot would further complicate the current over taxed and under controlled traffic/parking in this restricted area. This commercial district has only one way in and one way out, with no further updates to traffic infrastructure once the planned turnabout is finished.

Twice the developer has applied for a Development Permit for a bottle depot facility and twice the approval was ultimately defeated – once after being appealed to the Alberta Court of Appeal. Clearly neither the community nor the area businesses see a bottle depot fitting into this area.

The property developer has suggested that the Khan Report on Bottle Depots 2014 indicates that more bottle depots are needed in our rapidly expanding city – especially along the western side of the city. We question the need for a bottle depot at this location, as there is already a bottle depot at Crowfoot and Montgomery – both are in close proximity to this location.

OPPOSITION TO CHANGE OF LAND USE BEING REQUESTED

We do not support changing of the current Land Use designation. In applying for a Land Use change, the developer is attempting to remove the technical issues presented by the ARP in the decision process, one that has twice been a deciding factor of the SDAB, because the development did not fit the area, and that can't be ignored.

We believe that Council needs to take into consideration the original intent of what the current land use designation was for this area and how that land use has shaped it as an area where people:

- come and feel welcomed,
- know that they can find a night's rest and food,
- can find equipment and services for enjoying the recreation of our great community, and
- can find assistance in their spiritual journey.

We certainly are not against development of 60 Bowridge Drive NW. In fact, we think having the property developed with something that fits into the area under the current land use development is a desired outcome.

Thank you,



Ron Kinniburgh
Director of Operations
RockPointe Church

cc. The Western Canadian District of the Christian and Missionary Alliance
Attn: Wayne Heth - Officer



RECEIVED

2016 JUN 23 AM 10:08

THE CITY OF CALGARY
CITY CLERK'SCPC2016-175
Attachment 2
Letter 7

June 13, 2016

LETTER OF SUPPORT

To: Mayor Nenshi and Council
The City of Calgary

RE: Rezoning Application, File No. LOC2015-0137 *OR below T6 D2016*

Dear Mayor Nenshi and Council,

As you may recall, our company received a land use approval for a beverage container recycling facility in the community of Walden last year. Now, the building is under construction, and we should be operational this fall.

You may recall: We did not start out with all of the community of Walden supporting the bottle depot. Many had preconceptions about cleanliness, appearance, odours, etc. that were founded upon outdated notions about how bottle depots work.

I have written you this letter to communicate that the BCMB has really come a long way in recent years. By increasing their standards for facilities and the operation thereof, they have been able to compel high quality developments that function in a modern, internalized, and clean fashion.

I have now seen first-hand how local residents who were initially concerned with the placement of a bottle depot in their community come around in their opinions once they become accustomed to the facts of how a modern depot fits into a community, and how it can become a desirable and necessary amenity.

With this in mind, I have been made aware that Mr. Kulwant Dhillon will be coming before you about the land use rezoning to accommodate his proposed facility at 60 Bowridge Drive NW under File # LOC2015-0137.

I fully endorse Mr. Dhillon's application. You can reach me at (403) 608-2252 should I be able to provide you any further context on the design or operation of beverage container management facilities.

Best Regards,

A handwritten signature in black ink, appearing to read "Dennis Doherty", written over a horizontal line.

Dennis Doherty
President

Smith, Theresa L.

From: Steve McBride [mcbridesteve1@gmail.com]
Sent: Wednesday, June 22, 2016 3:58 AM
To: City Clerk
Subject: LOC 2015-0137
Attachments: LOC 2015-0137 Four Points by Sheraton Calgary West Part 1.pdf; 2015-0026.pdf; 2010-0159.pdf; 2011abca138 (1).pdf

Office of the City Clerk
The City of Calgary
700 Macleod Tr SE
PO Box 2100 Station M
Calgary AB T2P 2M5

Please find attached submission for the above matter before Council July 4, 2016. Please note that there are 4 (four) parts as the file was too large to send as 1.

--
Regards

Steve McBride
Four Points by Sheraton Calgary West
403 966 1233

RECEIVED
2016 JUN 22 AM 8:30
THE CITY OF CALGARY
CITY CLERK'S

2016 JUN 22 AM 8: 30

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Land Use Change 60 Bowridge Dr NW

1 LOC2015-0137

INTRODUCTION

The Business Owners, Service providers and Operators of the Bowfort Road Trans-Canada Highway Commercial district respectfully submit our remarks and concerns with respect to the application for the land use change to allow a bottle depot at 60 Bowridge Dr. NW.

BACKGROUND

As part of the Land Use Transition of 1995, Council had a vision of the area surrounding COP and bordering the Trans-Canada Highway. That vision excluded inclusion of certain parcels of land that, by virtue of their unique characteristics respective to the escarpments, Council felt would be better served by the existing LUB 2P80 C-6 Highway Commercial rather than 1P2007 C-COR 3.

Further, Council applied a Direct Control Bylaw 95Z92, that spoke directly to acceptable development of these properties, specifically "Single Family Dwelling as exists or Restaurant".

In addition, the Bowness Redevelopment Plan was adopted by Council in 1995, which gave a statutory plan that again spoke specifically to the development of the commercial sites along the TCH and Bowfort Road.

It is quite clear, by looking at these significant applications, Councils intent for this area was quite clear. A Commercial District that catered specifically to traveling public that did not only speak to the commercial use of the TCH, but to the recreational uses of the area.

Over the next almost 3 decades, development of the area has followed those lines exactly. Hotels, service stations, fast & full service restaurants, ski & water equipment rentals and also including the ever present required "Starbucks". Some would argue that businesses such as Windsor Plywood or Storage facilities even Rock Pointe Church don't fit that "intent". It is important to note that these existed prior to land use transition, and Council still felt their presence did not deter from the intent of the area as these did not contravene the ARP language that "de-emphasize linkages to rest of Bowness".

The intent is clear that the area was to be a casual use, a "super" service center that would provide that which the traveling public would need into one location from recreation, to food, to rest. Other services such as gas, liquor or even spiritual needs are covered in the area. The synergy created over the years of developing the area has kept a context that the local businesses want to see continue in the area as further development of surrounding areas to the south and west continue over the next decade or so.

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A BOTTLE RETURN FACILITY IS NOT A GOOD FIT

A Bottle return facility does not fit the "synergy" of the area. It's suited more for large industrial or commercial districts and would present a very uncharacteristic development to the area. In so much as the existing commercial area draws a "use" to the area, a bottle depot would draw a "destination" to the area that would further complicate the over taxed, under controlled traffic in the area that, upon completion of the TCH interchange, will still have no public or pedestrian infrastructure. This particular part of the commercial district will have one way in and one way out, and to date there is nothing from the City that indicates that sidewalks, crosswalks or and traffic signage, other than two existing yield signs, has been or will be planned anytime soon.

PLANNING HISTORY OF THE USE

Twice the developer has applied for a Development Permit, twice that application has been opposed by local residents and businesses, twice the Development Authority has approved the permit, twice that approval has been appealed to Subdivision and Development Appeal Board by the local residents and businesses, twice SDAB has overturned the Development Authority. The developer appealed to the Alberta Court of Appeal, and the Court upheld the SDAB's decision.

The SDAB made it quite clear in both its decisions that the bottle return development did not fit the area as set forth in the LUB's and Statutory Plan, the ARP. It did not have the "synergy" of the existing commercial district and the development "would have a negative impact on the existing businesses and community and further that it would unduly interfere with the amenities of the neighborhood, or materially interfere with or affect the use or enjoyment of neighboring parcels of land" pursuant to section 687(3)(d) of the Municipal Government Act.

THE KHAN REPORT ON BOTTLE DEPOTS 2014

In 2014, Council adopted the Khan Report (M-2014-022) and its recommendations with respect to Bottle Return facilities and the general recycling position. The Khan report spoke specifically to the districts that return facilities need to be located, C-COR 3, and that those facilities be in existing buildings as well as specifically addressed "not in DC districts as they are not needed".

This report addressed a number of issues, including the BCMB's position that the City of Calgary required an additional 6 return facilities, according to their estimations. The report identifies that these facilities are required "especially in the areas to the west", but is not specific as to where those "areas to the west" are. The BCMB has suggested their formula for calculating the required number of facilities is one for every 40,000 residents. Given the large development areas around the City, it would suggest that as areas of the City expand, the DA, BCMB and Planning Commission could be quite specific as to

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the locations that these 6 additional facilities need to be located as opposed to the non-specific "areas to the west".

These factors have to be considered when deciding where the right location is for the 6 new facilities are to be located. By the admission of the developer, it is their intention to follow the direction of the ARP and not draw from the Bowness community, and in their submitted opinion, "is already well serviced by return facilities in Crowfoot and Montgomery".

That in itself begs the question of why this location? The application has been supported by the BCMB, a quasi-governing Board under the auspices of the Ministry of Environment, comprised of primarily of Owner/Operators of Bottle Depots, and the developer of this application being one of those with a seat on this Board. Is it reasonable to question whether this is the best location or that of convenience to a Board member.

The Khan report further details criteria for selection of new and existing sites, none of which the application meet. It is not in a C-COR3 District, it is in a DC District and is not in an existing building. Additionally, the current application is for an Industrial – Edge, which the Khan report specifically states it is not allowable use and that discretionary use only be considered for the "Quick Drop" return facility.

OPPOSITION TO CHANGE OF LAND USE BEING REQUESTED

In applying for a Land Use change, the developer is attempting to remove the technical issues presented by the ARP in the decision process, one that has twice been a deciding factor of the SDAB, because the development did not fit the area, and that can't be ignored.

Council needs to give long pause to what the intent of the area was nearly 3 decades ago, how that intent has prospered and developed a thriving mix of commercial and recreational community, free of barriers and visible security measures such as bars and shutters. An area frequented by school children, families, aspiring athletes, recreational athletes, professional athletes and a host of others from primary schools, organized leagues and teams, to College and University students. The open and welcoming nature of the area is what has allowed it to prosper, and that which must be preserved.

It is not our intention to dissuade or discourage the development of the subject property, in fact we encourage it as it is one of the last parcels in the area to be developed. It is, however, our view that what is developed on this parcel meet the spirit of the areas "synergy", the intentions of Council, the intention of the applicable Statutory plan, and that it "caters to the Motoring public", which is what this Highway Commercial District does.

Thank You

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The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

Leonard Moriarity

Owner / Operator

Space Place NW Storage Ltd

Business / Service

May 16, 2016

Date


Signature

The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

Owner / Operator

Windsor Plywood - Doug Mott

Business / Service

May 16/16

Date

Signature



The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

Michael Thompson, Manager
Owner / Operator

Michael Thompson, 60 Bowridge Dr NW, Calgary
Business / Service

2015-01-14
Date

Signature

The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

MARK TAYLOR

Owner / Operator

Linwood Homes Ltd

Business / Service

MAY 13 / 2016

Date


Signature

The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

IAN COCHRANE SITE MANAGER

Owner / Operator

ACCESS SELF STORAGE

Business / Service

May 13, 2016 [Signature]

Date

Signature

The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

ENCLOSURE 47-1212

Owner / Operator

RE Bowridge Manor

Business / Service

2147 E 12th

Date

[Signature]
Signature

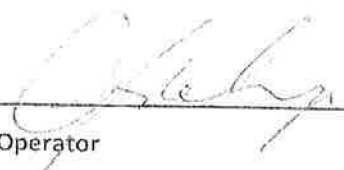
The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary

VINOD MAHAJAN
Owner / Operator

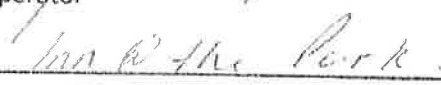
Business / Service SUBWAY

Vinod Mahajan
Date May 13/2016 Signature

The attached letter is a true and proper representation of our
view to the application for a land use change (LOC2015-0137)
60 Bowridge Dr NW, Calgary



Owner / Operator



Business / Service



Date



Signature

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

EXECUTIVE SUMMARY

This land use redesignation proposes a DC Direct Control District in order to accommodate a Beverage Container Drop-Off Depot use and provide use specific rules such as size, location, and potential other uses on the parcel.

PREVIOUS COUNCIL DIRECTION

None

ADMINISTRATION RECOMMENDATION(S)

2016 May 19

That Calgary Planning Commission recommends **APPROVAL** of the proposed Land Use Amendment.

REASON(S) FOR RECOMMENDATION:

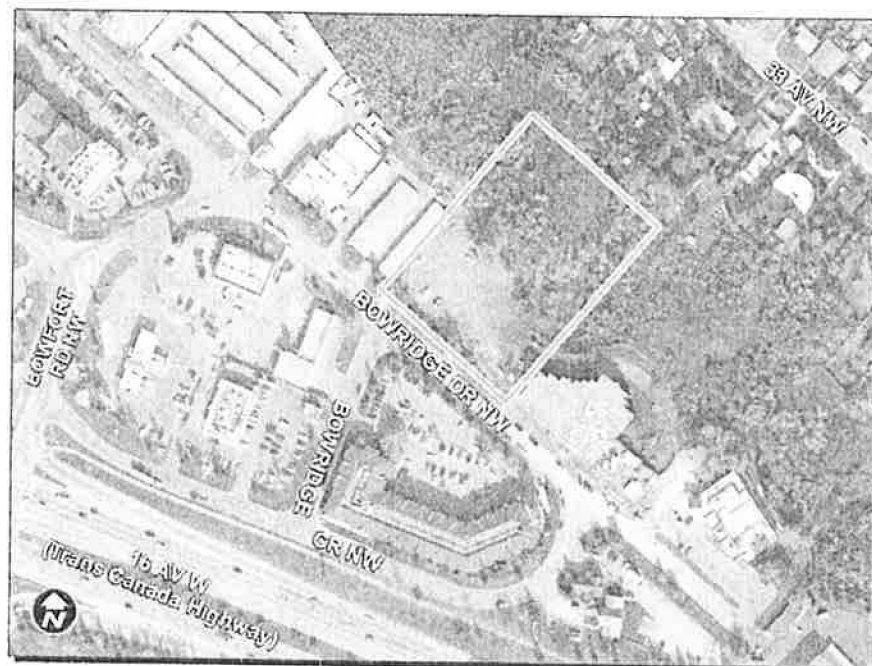
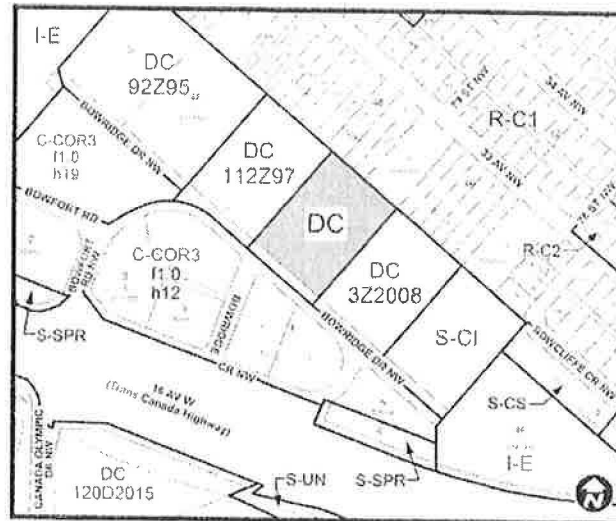
The existing Direct Control district for this site relates to the Highway Commercial area as outlined in the Bowness Area Redevelopment Plan (ARP) which reads "The purpose of this land use district is to provide for certain commercial uses which, in order to serve the motoring public, located on streets with heavy traffic volumes and a high level of exposure".

Given that the parcel is not located on a road directly adjacent to the Trans-Canada Highway, rather further to the south abutting the escarpment it is not considered to be truly Highway Commercial. Administration has drafted the DC Direct Control District to address screening the Beverage Container Drop-Off Depot with office and retail uses, not allowing external storage and requiring a minimum quantity of parking to accommodate the use.

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

LOCATION MAPS



ADMINISTRATION REPORT
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2016 MAY 19

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LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

ADMINISTRATIONS RECOMMENDATION TO CALGARY PLANNING COMMISSION

Recommend that Council **ADOPT**, by bylaw, the proposed redesignation of 1.07 hectares \pm (2.64 acres \pm) located at 60 Bowridge Drive NW (Plan 5565AH, Block 46, Lot 27) from DC Direct Control District ~~to~~ DC Direct Control District to accommodate office, retail and beverage container drop-off depot with guidelines (APPENDIX II).

J. Dutton

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

Applicant:

Manu Chugh Architect

Landowner:

1447743 Alberta Ltd
(Kulwant Singh Dhillon)

PLANNING EVALUATION

SITE CONTEXT

The site is located south of an escarpment which runs along the south edge of the parcels that face onto the south side of 33 Avenue NW. Surrounding development consists of Self-Storage Facilities to the west and east, residential to the north, and a hotel and other commercial developments to the south.

LAND USE DISTRICTS

The subject parcel is located within the "Commercial Highway" district in Map 2: Land Use Policy Areas of the Bowness Area Redevelopment Plan (ARP). This area requires any new development to be setback from the escarpment at least to the minimum stated in the Calgary General Municipal Plan.

The proposed DC allows for the inclusion of Beverage Container Drop-Off Depot as a use while requiring site specific details that limit the potential impact it may have on the surrounding residential development. Administration considered a variety of land use districts but determined that Industrial Edge (I-E) District is the most appropriate for the site. Though it does not accommodate Beverage Container Drop-Off Depot as a use, other districts would require deletion of a number of discretionary uses that would not be appropriate.

LEGISLATION & POLICY

No amendment to the Bowness ARP is required as the document does not reference specific Direct Control districts.

TRANSPORTATION NETWORKS

The site is located approximately 980 metres from the transit stop, servicing the Route 40 and 407, and offers service to the Crowfoot and Brentwood LRT station respectively.

J. Dutton

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

There are no parking restrictions in the area. Parking should be provided at the time of a Development Permit.

UTILITIES & SERVICING

To support the proposed development a watermain upgrade will be required.

ENVIRONMENTAL ISSUES

At the Development Permit stage a Slope Stability Report will be required.

ENVIRONMENTAL SUSTAINABILITY

Storm water sewer upgrades may be required at the Development Permit stage at the expense of the developer.

GROWTH MANAGEMENT

The proposed amendment does not trigger capital infrastructure investment and therefore there are no growth management concerns at this time.

PUBLIC ENGAGEMENT

Community Association Comments

The Community Association commented in objection to the application (see Appendix III)

Citizen Comments

Nine letters of objection were received, concerns include:

- o Lower property values;
- o privacy and quality of life;
- o increased pressure on parking;
- o impact on escarpment;
- o increased vandalism and petty crime;
- o not integrating with surrounding uses;
- o magnified sound due to escarpment; and
- o any development should respect the ARP.

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

Public Meetings

Five meetings were held with adjacent land owners from December 2015 to February 2016.

A public open house was held on 2016 March 07.

Issues raised in the public engagement process were:

- o Noise Created by bottle depot operation;
- o inappropriate next to residential areas;
- o escarpment should not be accessible to public;
- o increased traffic;
- o odour from operation; and
- o reduction of property values.

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

APPENDIX I

APPLICANT'S SUBMISSION

This Land Use Amendment application is submitted on behalf of 1447743 Alberta Ltd to re-designate Plan: 5565 AH, Block: 46, Lot: 27, located at 60 Bowridge Drive N.W. in the community of Bowness. The proposal would re-designate the subject parcel being 1.07 ha± from DC Direct Control Bylaw 91 Z 95 to DC Direct Control Bylaw to accommodate a Beverage Container Drop-off Depot with the base land use district of Industrial – Edge.

The reason for this land use amendment application is to develop a mixed use building on the subject parcel containing an office, retail and beverage container drop off depot. The owner of the parcel has made two unsuccessful attempts, over the past 4 years, to secure a development permit, both development permit applications were approved by the Development Authority but subsequently refused by the Sub-division and Development Appeal Board. Currently this parcel is the only parcel that is vacant in the area.

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

APPENDIX II

PROPOSED DIRECT CONTROL GUIDELINES

Purpose

- 1 This Direct Control District is intended to:
- (a) accommodate a **Beverage Container Drop-Off Depot** as a *use*; and
 - (b) provide *use* specific rules such as size, location and other *uses* for **Beverage Container Drop-Off Depot**.

Compliance with Bylaw 1P2007

- 2 Unless otherwise specified, the rules and provisions of Parts 1, 2, 3 and 4 of Bylaw 1P2007 apply to this Direct Control District.

Reference to Bylaw 1P2007

- 3 Within this Direct Control District, a reference to a section of Bylaw 1P2007 is deemed to be a reference to the section as amended from time to time.

Permitted Uses

- 4 The *permitted uses* of the Industrial Edge (I-E) District of Bylaw 1P2007 are the *permitted uses* in this Direct Control District.

Discretionary Uses

- 5 The *discretionary uses* of the Industrial Edge (I-E) District of Bylaw 1P2007 are the *discretionary uses* in this Direct Control District with the addition of:
- (a) **Beverage Container Drop-Off Depot**.

Bylaw 1P2007 District Rules

- 6 Unless otherwise specified, the rules of the Industrial Edge (I-E) District of Bylaw 1P2007 apply in this Direct Control District.

Rules for Beverage Container Drop-Off Depot

- 7
- (1) The maximum cumulative *gross floor area* for a **Beverage Container Drop-Off Depot** is 85 percent of a *building* in which it is located.
 - (2) The minimum number of *motor vehicle parking stalls* for a **Beverage Container Drop-Off Depot** is 20.
 - (3) A **Beverage Container Drop-Off Depot** must not have outdoor storage.

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LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

Location of Uses

- 8 With the exception of **Beverage Container Drop-Off Depot**, all *uses* must front onto Bowridge Drive NW.

LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

APPENDIX III

LETTERS SUBMITTED

The Bowness Community Association is not in support of this application. We have participated in two previous applications regarding this development and have made it very clear that we will not support a bottle depot at this location. The SDAB has supported our appeal of the Development Authority's decision to support the development and have supported the validity of our ARP. It appears that they are prepared to respect the time and efforts that have gone into the ARP while the city seems reluctant to. If the city finds fault with the ARP, or no longer wishes to refer to the sound planning practices evident in the ARP, we request that the City implement a review of the ARP in collaboration with the community.

Clarification on what exactly the application is for would be helpful. Is it asking CPC to change the DC Direct Control District permitted uses or is it asking to change or remove this Direct Control District from the Bowness ARP that specifies "the uniqueness of this area due to barriers created by the escarpment along its northerly boundary, the topography to the west and the Trans Canada Highway to the south"?

The objectives – Highway Commercial as listed on page 57 include:

Continue to establish the area fronting the Trans Canada Highway as a commercial area catering primarily to the travelling public.

Integrate the land uses in this area with those to the west and south and de-emphasize linkages to the rest of Bowness.

Ensure that new developments do not negatively impact on the escarpment lands, vegetation and wildlife.

Policies – Highway Commercial as listed on page 59 include:

In the Highway Commercial area as defined on Map 6, uses that provide service to the travelling public from the Trans Canada Highway are to be supported.

New development (including parking/storage) referred to in Policy #2 should be set back from the escarpment at least to the minimum stated in the Calgary General Municipal Plan (60 feet). Any new development should not be a prominent feature when viewed from the valley floor.

Redevelopment of the escarpment area is strongly discouraged. Any development that may impact on the slopes may be subject to soil stability/environmental impact studies at the request of the City Engineer prior to any approvals being granted.

J. Dutton

ADMINISTRATION REPORT
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LAND USE AMENDMENT
BOWNESS (WARD 1)
BOWRIDGE DRIVE NW WEST OF BOWRIDGE CRESCENT NW

MAP 34W

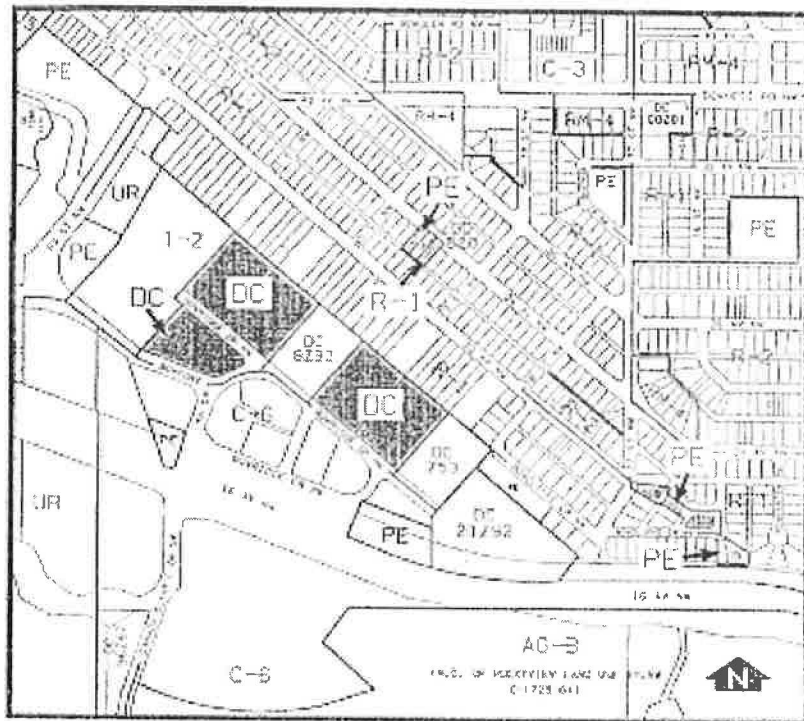
The Bowness Community Association is disappointed that we will potentially be required to put more time and energy into an issue that we have fought twice and won twice. It is imperative that the Development Authority respect the decision of the SDAB, the Provincial Court of Appeal and the residents of the community of Bowness.

If you have any questions please contact the undersigned at planning@mybowness.com

J. Dutton

Amendment No. 95/079
Bylaw No. 92Z95
Council Approval: 11 December 1995

SCHEDULE B



1. Land Use

The permitted and the discretionary uses contained in Section 40, C-6 Highway Commercial District, shall be the permitted and discretionary uses respectively, with the deletion of:

- auto body and paint shops;
- automotive sales and rentals;
- automotive services;
- automotive specialties;
- entertainment establishments;
- gaming establishments - bingo;
- public and quasi-public buildings.

For the purposes of this bylaw, the following shall be discretionary uses:

- restaurants;
- single detached dwellings existing at the date of approval of this bylaw.

2. Development Guidelines

The General Rules for Commercial Districts contained in Section 33 of Bylaw 2P80 and the Permitted and Discretionary Use Rules of the C-6 District shall apply unless otherwise noted below:

a. Setback

New development, including parking and outside storage, shall be set back a minimum of 60 feet from the top of the escarpment.

b. Development Plans

Approval of this application does not constitute approval of a development permit. Comprehensive plans shall be submitted to the Approving Authority as part of a development permit application.



SUBDIVISION AND DEVELOPMENT APPEAL BOARD

DECISION

Hearing held at: Calgary, Alberta

Date of hearing: September 09, 2010

Members present: Chairman, Rick Grol
Kerry Armstrong
John Attrell

Meg Bures
Angela Dowling
Robert Merchant

2016 JUN 22 AM 8:30
THE CITY OF CALGARY
CITY CLERK'S

RECEIVED

Basis of appeals: This is an appeal from an approval by the Development Authority for a development permit made on the application of **Scott Builders** for a new: **bottle return depot** at 60 Bowridge Drive NW.

Appeals filed by: **Sophie Stocking, Joan Reinhardt, Shirley Westerveld, Bowness Community Association represented by Niki Smyth, and Linda Flanagan**

Description of Application:

The appeal before the Subdivision and Development Appeal Board ("Board") deals with an approval by the Development Authority of a development permit for a new bottle return depot at 60 Bowridge Drive NW. The property is located in the community of Bowness and has a land use designation of DC Direct Control District pursuant to Bylaw 92Z95.

The City of Calgary, Subdivision and Development Appeal Board # 8110
P.O. Box 2100, Station M, Calgary, Alberta T2P 2M5
Phone: (403) 268-5312 Fax: (403) 268-5982

Summary of Evidence:

The Board heard verbal submissions from the following:

Andy Orr, representing the Development Authority;
Eric Knudtson, representing The City of Calgary Transportation department;
Judy Steele, representing the appellants, in favour of the appeal;
Niki Smyth of Bowness Community Association, in favour of the appeal;
Joe Leizerowicz of Bowness Community Association, in favour of the appeal;
Steve McBride of Sheraton Calgary West, in favour of the appeal;
Linda Flanagan, appellant, in favour of the appeal;
Scott Mather, business owner and applicant, opposed to the appeal; and
Francis Lee, project designer, opposed to the appeal.

The Development Authority:

The Development Authority presented the report, photographs, and plans, viewgraph and additionally submitted the following:

The item presented is an appeal of the Development Authority's decision to approve an application for a new bottle return depot located at 60 Bowridge Drive NW in the community of Bowness. The site is designated DC Direct Control District 92Z95 under C-6 Highway Commercial District with specific absence of Automotive uses. This proposal is a specific discretionary use application in this DC district.

The site has significant slope on its northern portion and has limited developable area. A previous approvals as a garden center was granted and the site is abutted by a self storage facility to the west, single detached dwellings to the north, a pending development for a storage facility to the east and a hotel to the south.

The site was notice posted and circulated to the Community Association and other effected parties. Objections were received concerning the inappropriateness of the use, odour, noise, and parking issues. The file has gone through a number of revisions, in particular the retail component has been removed and now the bottle depot, and parking area is the only building being proposed with this application

The applicant is using the existing landscaping buffer on Bowridge Drive NW with mature trees and adding a parking area as noted. As per the requirement of the DC, no new development is occurring within 60 feet of the escarpment. To better self contain the site and use a fence is being added to preserve the escarpment area. There is no requirement for outside storage noted.

The building height of 8.23 metres is well under the 12 metres maximum and there is no signage on the east or west elevations that could impact abutting developments. The floor area consists largely of a warehouse area and collection area as noted, and loading bays.

In terms of bylaw relaxations, the Development Authority refers the Board to page 29-31 of the Board report where the file manager described in detail the rationale for considering the bylaw relaxations.

The Bowness Area Redevelopment Plan ("ARP") identifies the site for Highway commercial district uses are respected by the applicant and incorporated in the DC.

In conclusion the Development Authority felt the application was respecting the intent of the DC, and the requested relaxations were reasonable and the application was approved as per the conditions.

Upon questioning by the Board, Mr. Knudtson of The City of Calgary Transportation department presented the following:

- There are plans to build an interchange at the intersection of 16 Avenue (Trans Canada Highway) and Bowfort Road. The bottleneck of traffic issues on Bowfort Road stems from the current operation of the intersection.
- Bottle depots are not mentioned in the ITE handbooks, but, in the opinion of Transportation, the trip generation of the proposed use is comparable to a warehousing or light industrial function. Using this function as a comparison, the estimated trip generation in the pm peak hours meets their standards.
- In his opinion, the additional trips generated by the proposed development will not unduly complicate the existing traffic problems in the area.

In Favour of the Appeal:

The appellants' representatives, appellants, and area residents submitted documentation and photographs, and raised the following issues in favour of the appeal:

- Ms. Steele, the appellants' representative, submitted that the appellants, area residents and local businesses bonded together to oppose the proposed development, as they all feel it would be detrimental to their area. They submitted the following points:
 - Zoning - the site is zoned Direct Control with C-6 Highway Commercial guidelines under Land Use Bylaw 2P80. The purpose of C-6 is to provide for certain commercial uses which, in order to serve the motoring public, locate on streets with heavy traffic volumes and a high level of exposure. This area is not a typical line of commercial uses along a highway, but rather, is a stand-alone area with its

own access off the highway. It is a unique area set aside to cater to the travelling public. The proposed bottle depot will not be on a street with heavy traffic. It will be at the back of the site, with no level of exposure, until a person is immediately in front of it.

- Bowness Area ARP - page 53, Objectives of the Highway Commercial section, states that the area fronting the Trans Canada Highway should be developed to cater primarily to the travelling public and de-emphasize linkages to the rest of Bowness. It is the community's contention that this development does not fulfill this objective as it does not cater to the travelling public and its use will link with the rest of Bowness.
- Direct Control (DC) District - to provide for developments that, due to their unique characteristics, innovative ideas, or because of unusual site constraints, require specific regulations unavailable in other land use districts. They believe that City Council approved this DC because they wanted to create a special area in Calgary to service the travelling public, and, in this case, to set aside an area to cater to travelling families. They do not believe that the subject bottle depot will cater to the needs of the travelling public, but, rather will be a destination point for the northwest communities of Calgary. In their opinion, this is not what was envisaged by City Council in its approval of this site.
- Vehicular traffic - the proposed development will cause increasing traffic into a busy internal road system, past busy restaurants and hotels where families congregate. This increased traffic will be a safety hazard to these travelling families. The bottle depot traffic will not be from the travelling public but rather from nearby residential communities and will include transport trucks to pick up the collections of recyclables. The existing roadways are a difficult, twisted and conglomerated network of streets.
- Traffic in the immediate area is currently highly congested with only one direct egress out of the area: one single stop sign at the corner of Bowfort Road and Bowridge Drive. Additional transient traffic in this area will further deteriorate traffic flow and substantially affect access to existing businesses. It is the appellants' and business owners' position that before any further development of the area, a traffic study should be conducted.
- Pedestrian traffic - there are no sidewalks in this area. Bottle depots are visited by many people on foot carrying large loads or using shopping carts. These people will be forced to walk on the road, thereby creating a safety hazard.
- Hours of operation - if this proposed development gets approval from the Board, it must reflect the quiet enjoyment of the neighbouring properties specifically two large hotels around the site.
- Homeless population - this is an issue because bottle picking has become a lucrative business and the proposed development will create a destination place for homeless people or scavengers. The area provides parks and natural green areas; the business and residential communities are concerned that the homeless will camp out on the parks and green areas where they will be unprotected. The location for this proposed project is completely isolated from any social services or other community supports as some of the downtown bottle depot locations provide.

- Impact of this proposed development on businesses in the immediate area - the existing businesses are presently frequented by people panhandling and looking for a place to sleep. The bottle depot will cause these concerns to increase. A number of the businesses have indicated that they will have to increase their security and maybe fence their parking lots and put bars on their windows. All of this will have a negative impact on the attractiveness of the area and will alert the travelling public to problems in the area thereby negatively affecting their businesses.
- Negative impact of this development to the Bowness community – the subject site backs onto an attractive residential area. Many bottle pickers travel by foot. There is a pathway up the escarpment which the bottle pickers will use after they scavenged through the yards and garbage areas below the bottle depot. This will not only negatively impact the residents, it will also create a safety hazard with increased scavengers frequenting the area and the quiet nature of this area will be infringed upon.
- A letter from the neighbouring community of Montgomery was also submitted where it is indicated the negative impact of their bottle depot has had since it opened. Also submitted was a letter from Constable J. Niven, Community Liaison Officer (Calgary Police Service) for the area.
- In addition, they submitted a list of signatures of residential property owners who oppose this type of business. Numerous letters were also submitted from local businesses supporting the appeal.
- Furthermore, the appellants submitted that this NW Calgary area is already well serviced by bottle depots with centres at Crowfoot, Varsity and Montgomery. There does not appear to be a need for another facility, as letters from both the Crowfoot and Montgomery bottle depots indicate that they are presently operating at only 60 percent of their capacity.
- In summary, for all the above reasons, the appellants felt that the development does not meet the requirements of the Province of Alberta *Municipal Government Act*, R.S.A. 2000, c.M-26., section 687(3)(d), in that the proposed development will unduly interfere with the amenities of the neighbourhood and materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. McBride, Director of Food and Beverage of the Hotel Four Points By Sheraton Calgary West, also addressed the Board. He submitted the following points in support of the appeal:

- The biggest concern they have is that the proposed development is right across the street from a three-and-a-half star and four-star hotel. They are presently to embark on a \$5 million renovation of the property, which is going to directly impact the type of clientele of the hotel. Their property is a leisure property, which means the hotel caters to families, sports teams, universities, high schools, etc.
- The issue is traffic. He referenced the photographs submitted and pointed out that "the traffic in the area right now is absolutely brutal". Mr. McBride disagrees with the City's assertion that there is no concern with regards to traffic or parking. He

explained that if one take a look at this particular area: the only access to that entire area, in or out, is a one-way street. Across the street is also the Sandman Hotel (just under 100 rooms). His hotel has 150 rooms. On a Friday at 5 p.m. it is almost impossible to get through the intersection.

- In his opinion this particular development is going to significantly impact the traffic in the area. The development will add to the congestion of traffic.
- The next issue is pedestrian traffic; there are no sidewalks and crossings.
- He further reiterated the issue of bottle pickers, homelessness and vagrants in the area, as addressed by the other appellants. They already have problems with people sleeping in the basement areas and hallways. As a result security is an issue for their hotel. This development will necessitate adding security measures for the safety of their guests. They will need to gate their hotel. He referenced the photographs of people loitering in the area.
- Hours of operation have not been suggested for this development. He requests that the hours of operation be restricted if the Board would approve the development.
- Further he pointed out that the letters the applicant has obtained in support are from employees of the businesses, not from the business owners, whom he knows.
- In rebuttal, Mr. McBride stated that his hotel, which is located directly across the street from the proposed development, has 132 rooms with balconies. Consequently, the potential noise and odours from the proposed development would have a considerable impact on his hotel guests, and therefore on his business.

Ms. Smyth and Mr. Leizerowicz on behalf of the Bowness Community Association as well Ms. Flanagan addressed the Board in support of the appeal. They raised the following points:

- Mr. Leizerowicz presented several photographs of the area and the location of the proposed development. He also showed photographs from the Montgomery bottle depot to illustrate the volume of customers a typical bottle depot attracts. There are several vehicles per minute coming and leaving.
- In addition, he showed photographs of the transient population, homeless, who do "bottle picking" and frequent the Montgomery depot. He stated that this is the typical culture or subculture that has been created by the establishment of bottle depots in Montgomery. One can expect this is very likely to happen too if one is established in the Bowridge Drive area.
- Ms. Smyth brought to the Board's attention page 21 of the Board report respecting the relaxations granted by the Development Authority for the proposed development. They are objecting to all the relaxations but particularly the parking stall relaxation of 16 as it is a large number. In the appellants' opinion, this is a substantial relaxation in an area plagued with a parking shortage.
- She would like to see consistency on the wording of development permit's description. On page 10 of the Board report, the description is "New: Bottle Return Depot". However on page 11 of the Board report in the conditions of approval, the

development permit's description stated "New: Bottle Return Dept, Retail Store". In the event, the appeal is not allowed; they request the Board to correct this in any approval of the development.

- Furthermore, she pointed out that The City's Transportation department did not do a traffic impact study on any bottle depot in Calgary and that may be a factor that should be considered.
- Ms. Flanagan pointed out that this isn't the right type of business to be located at this location. They try to stay away from the social aspects, but the social aspects are a real consequence of the proposed development that are affecting the residents and their properties who live directly below the location of the proposed development.

Opposed to the Appeal:

The applicant and the project designer distributed documentation to the Board including photographs and raised the following issues in opposition of the appeal:

- Mr. Mather submitted that the proposed development which will be called a "Green Depot" is an industry leading beverage container recycling drop off facility. It is also an environmentally responsible business. It will support the underserved central northwest residential communities. It is also a business that conforms to the Bowness ARP and the surrounding businesses.
- He added that this proposed business is going to be a sponsorship partner with local clubs and charities through innovative profit sharing program. It also has the approval of Beverage Container Management Board ("BCMB").
- The northwest and central northwest areas of Calgary are a heavily residential based area of Calgary with a very limited number of lots that provide adequate zoning for a beverage container drop off centre and that are set back from the residential communities. The Bowridge commercial district is one of the very limited number of sites that provides zoning which permits a beverage container return centre to service these residential communities, while not being located inside of the residential portion of the community.
- The proposed business is in line with other commercial businesses located in the Bowridge commercial district, such as two self storage businesses, a warehouse, self service car wash, and a commercial lumber business.
- He also addressed the concern raised by the appellant regarding vagrancy. In his opinion, vagrancy concerns are not associated with suburban, community based beverage container drop off depots, rather with urban depots. The proposed site is located in a commercial business district, away from any residential or urban areas. The proposed site is only accessible by vehicle and the entire property will be 100 percent secured by fences, gates and security systems.
- In addition, Mr. Mather submitted that the operator is a proven experienced operator. They had a 94 percent score on the most recent BCMB inspection in their facility in Banff, Alberta. He also referred to a study on the importance of recycling

and directing beverage containers away from landfills and the impact alone that the beverage container recycling program has had in Alberta. The study also referenced the number of barrels of oil conserved, because of the plastics required to create products such as P.E.T. containers, as well as landfill space avoided and greenhouse emissions that are avoided.

- In regard to the concern about the traffic impact of the proposed development, he submitted that The City's Transportation department has evaluated the traffic in the local area and found no concerns with the proposed development. Bowridge Drive is located right next to the Trans Canada Highway, providing excellent transportation access. Also the Green Depot has had discussions to enter into an agreement with the Rockpoint Church at 12 Bowridge Drive to provide use of the Green Depot parking lot to congregation members for the Church's overflow parking during non-business hours. As such, the proposed development will reduce parking and traffic congestion in the local area.
- He further added that all loading and unloading of containers will be handled inside of the depot. Significant efforts have been made in the design of the building to mitigate any acoustic and odour concerns. Also, in his opinion, directionally, sound does not travel downwards from their location as it is set back from the wooded escarpment.
- Mr. Mather explained that the depot's air exchange system will provide three complete air exchanges per hour. It will be used to filter, purify and dispense air to the side of the property not facing the nearest businesses. No other bottle depot in Alberta uses as comprehensive of an air exchange system as the one proposed.
- He explained that the applicant, Scott Builders, is a reputable local construction company. They are going to ensure that the proposed development will be of high quality and aesthetically facility that matches the local businesses in the commercial district. The proposed building is replacing an old residential house that was converted into a greenhouse, and as such the proposed development is enhancing the quality of the commercial area.
- The applicant admitted that they had a meeting with the Bowness Community's representative. Despite this meeting, the Community's representative submitted their concerns to the development permit's file manager. In response to the numerous concerns, the applicant made some accommodations and submitted revisions to the proposed project, such as:
 - reducing the amount of developed area to a single building, eliminating a planned retail development;
 - increasing the number of customer parking stalls;
 - adding a fence to the rear of the property for increased security;
 - reducing the number of windows to mitigate acoustic concerns; and
 - increasing the number of air exchanges for odour concerns.
- Finally, Mr. Mather submitted that they would like to work with the community in an open manner to take on the recommendations and concerns and to work in a positive manner to bring this proposed facility to fruition.

Upon questioning by the Board, Mr. Mather provided the following information:

- The security system consists of a fence and cameras that will run 24 hours per day, seven days per week. The site manager will have an access to the cameras so they can log on and understand issues.
- Proposed hours of operation are 9:00 a.m. to 6:30 p.m. on weekdays; 9:00 a.m. to 5:00 p.m. on Saturdays; and 12 noon to 5:00 p.m. on Sundays.
- In this facility, they are anticipating about 100 customers per day.
- The applicant was not planning to have the site manned during non-business hours, but if there is a need for a security guard for the facility, the applicant is amenable to this idea and they already inquired on the possible cost to be incurred.
- They anticipate having the materials out off the site once a day using a large cargo truck.

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; and
- Considered all the relevant planning evidence presented at the hearing, the arguments made and the circumstances and merits of the application.

1. The appeal is allowed and the decision of the Development Authority is overturned.

2. The development permit is null and void.

Reasons:

1 Having considered the written, verbal, and photographic evidence submitted, the Board notes that the appeal pertains to an approval by the Development Authority of a development permit for a new bottle return depot at 60 Bowridge Drive NW. The property has a land use designation of DC Direct Control District pursuant to Bylaw 92Z95.

2 The appellants submitted, in summary, that the proposed development is not appropriate for the site, is detrimental to the area, and is contrary to the Bowness ARP, as it does not fulfill the objectives of the ARP for this area. In their opinion the development does not cater to the travelling public and will be a destination point for the northwest communities of Calgary. It will bring increased traffic into an already overloaded road system. As "bottle picking" has become a lucrative business, the

development will create a destination place for homeless and scavengers. Furthermore, the development will impact the adjacent businesses, in particular the hotel across the street.

3 The Board has particular regard to section 641(4) of the *Municipal Government Act*, which provides:

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

- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (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.

4 The Board has particular regard to the following sections of Land Use Bylaw 1P2007:

Section 22 states:

Reference to Other Bylaws in Direct Control Bylaws

22 (1) Where a **parcel** is designated with a Direct Control District:

- (a) pursuant to this Bylaw, a reference to a section of this Bylaw within the Direct Control Bylaw is deemed to be a reference to the section as amended from time to time, unless a contrary intent is stated in the Direct Control Bylaw; and
- (b) pursuant to a previous land use bylaw and such designation is continued pursuant to this Bylaw, the Direct Control Bylaw, as approved by **Council** at the time such designation was made, will continue to apply, unless a contrary intent is set out in the Bylaw designating the **parcel** Direct Control.

(2) Direct Control Bylaws that were passed pursuant to previous land use bylaws and are denoted on the Land Use District Maps:

- (a) are hereby incorporated into and form part of this Bylaw as if repeated herein at length; and
- (b) notwithstanding the definitions contained in this Bylaw, each Direct Control Bylaw must assume only those

meanings for the terms contained therein that were intended at the date of the original passage.

5 The Board has particular regard to Bylaw 92Z95 ("DC Bylaw"), which states:

1. Land Use

The permitted and the discretionary uses contained in Section 40, C-6 Highway Commercial District, shall be the permitted and discretionary uses respectively, with the deletion of:

- auto body and paint shops;
- automotive sales and rentals;
- automotive services;
- automotive specialties;
- entertainment establishments;
- gaming establishments -bingo;
- public and quasi-public buildings.

For the purposes of this bylaw, the following shall be discretionary uses:

- restaurants;
- single detached dwellings existing at the date of approval of this bylaw.

2. Development Guidelines

The General Rules for Commercial Districts contained in Section 33 of Bylaw 2P80 and the Permitted and Discretionary Use Rules of the C-6 District shall apply unless otherwise noted below:

a. Setback

New development, including parking and outside storage, shall be set back a minimum of 60 feet from the top of the escarpment.

b. Development Plans

Approval of this application does not constitute approval of a development permit. Comprehensive plans shall be submitted to the Approving Authority as part of a development permit application.

6 The Board regard to Land Use Bylaw 2P80, in particular the following sections: section 18(2), section 40(3)(a) and (f), section 40(4) and (5), and section 40(3)(i).

Section 40(4) of Land Use Bylaw 2P80 lists "Bottle return depots" as a discretionary use in the C-6 District.

7 The Board also has regard to the Bowness ARP.

It states on page 53, in part:

Objectives - Highway Commercial

1. Continue to establish the area fronting the Trans-Canada Highway as a commercial area catering primarily to the travelling public.
2. Integrate the land uses in this area with those to the west and south and de-emphasize linkages to the rest of Bowness.
3. Provide a framework for the orderly evolution of development between the highway commercial uses and the escarpment.
4. Ensure that new developments do not negatively impact on the escarpment lands, vegetation and wildlife.

[...]

On page 55 it states, in part:

Policies - Highway Commercial

1. In the highway commercial area, as defined on Map 6, uses that provide service to the travelling public from the Trans Canada Highway are to be supported.

[...]

8 Pursuant to section 40(3)(a) of Land Use Bylaw 2P80 the minimum required depth of the front yard is 6.0 metres. As the front yard is 2.81 metres, a relaxation of this section of 3.19 metres is required.

9 Pursuant to section 40(3)(f) of Land Use Bylaw 2P80 all minimum required front and side yards except for accessways from public thoroughfares, shall be landscaped. As the plans indicate a total of 178.02 square metres of landscaped area, a relaxation of 51.18 square metres is required of this section. In addition, a relaxation for one large tree in the required landscaped area is required.

10 Pursuant to section 18(2) in conjunction with section 40(3)(i) of Land Use Bylaw 2P80 a total of 49 parking stalls is required. The development provides a total of 33 parking stalls. Therefore, a relaxation of 16 stalls is required.

11 The Board notes that the objectives and policies of the ARP for the highway commercial area, that encompasses the subject site, give direction for uses in this area

that cater to and provide services to the travelling public from the Trans Canada Highway.

12 The existing uses/ developments in this area are in the Board's opinion for the most part highway oriented and cater to the travelling public. The restaurants, fast food outlets, and two hotels exemplify the highway orientation and are aimed towards the traveling public on the highway. The proposed development is, instead, intended to target the residents in the west and northwest communities of the city. The Board thus concurs with the appellants that the proposed development is not highway oriented as contemplated in the ARP.

13 Based on the evidence and the aforementioned factors, the Board finds that the proposed development does not meet the ARP.

14 In terms of the required parking relaxation, the applicant submitted that the development meets the parking requirements of the BCMB. However, determinative are the parking requirements of the Land Use Bylaw, not the requirements of a provincial regularity body that regulates and licenses the business as proposed. Therefore, the Board finds this argument not persuasive. The Development Authority pointed out that perhaps the parking requirement might be less, or non-existent, if one looks at the developable area of the site. However, the Land Use Bylaw requires that the proposed use of the whole parcel/ site needs to be taken into account, irrespective whether a parcel, or portions of it, is difficult to develop or not.

15 With respect to the traffic issues, the Board notes the following. The appellants pointed out that as a result of the layout of the whole area surrounding the proposed development and the design of the roadway system within that area there is a strong tendency towards congestion due to the traffic generated by the existing uses.

16 The Board notes that traffic flow in the immediate area is further complicated by two significant factors: (a) Bowridge Crescent NW is a one-way street (eastbound) allowing traffic into the immediate area; and (b) there is only one egress point out of the area, via the intersection of Bowfort Road and Bowridge Drive NW.

17 The applicant stated that the number of customers per day for the proposed development would be approximately 100. The Board notes that this would equate to 200 vehicle trips per day. However, the Board notes that this is excluding employees, suppliers, transport trucks etc.

18 The Board notes that the applicant did not conduct a traffic study for the proposed development nor was one requested by the Development Authority.

19 The Transportation department equates the subject use to be classified as "light industrial" which, in terms of transportation standards, is estimated to create 11 trips per hour in the pm peak. Mr. Knudtson felt that this would not unduly impact traffic in the

immediate area. However, it is the Board's opinion that this estimate seems too low, given the applicant's estimation of the anticipated number of 100 customers per day. This would translate to a much higher number of vehicle trips per hour. The applicant's anticipated number of customers throughout the day, every day of the week, would be more than the Transportation department's estimate of vehicle trips at the pm peak. The Board thus finds that the overall traffic generated by the proposed development would be higher than the Transportation department's estimate.

20 Although Mr. Knudtson of the City's Transportation department at the hearing submitted that the additional trips generated by the proposed development will not complicate the existing traffic problems in the area, he confirmed that a traffic bottleneck exists on Bowfort Road at Bowridge Drive; traffic backs up on Bowfort Road due to difficulties on the 16 Avenue intersection which causes traffic congestion in the immediate area. The appellants' evidence presented at the hearing corroborated this evidence, which the Board accepts.

21 Mr. Knudtson maintained that this problem would be alleviated once the interchange at the intersection was constructed. However, since the interchange at Bowfort Road and the Trans Canada Highway has not yet started construction it is difficult to know when any current traffic problems will be resolved. In the Board's opinion, to approve a development that could generate 200, if not more, trips a day in an already congested area would be premature and would only exacerbate an existing problem.

22 The Community Association expressed concerns about the number of transients in the community who are searching through dumpsters to find recyclable containers that can be returned to a bottle depot in exchange for money. Mr. McBride stated that the proposed development would necessitate adding security measures to his hotel for the safety of guests and their personal property, as well the safety and security of the hotel and staff. Scavenging is already a serious concern to the hotel, and the proposed development will only increase those concerns.

23 The applicant asserted that transients as well could return their containers/ bottles to the other liquor stores that exist in the immediate area. The appellants pointed out that these liquor stores are not licensed to accept bottle returns. The Board accepts the latter evidence for the purpose of the appeal.

24 The Board notes that there are no sidewalks or crosswalks in the immediate area, which is clearly vehicle/ car oriented and is not designed for pedestrian access. Several of the appellants presented evidence that there are no sidewalks or marked crossings in the area, which makes travel by foot hazardous. A number of appellants presented photographic evidence of customers attending other bottle depots on foot carrying large loads, or using shopping carts. Because the immediate area is not designed for pedestrian traffic, it is reasonable to assume that customers on foot would contribute to the road congestion in the area.

25 Although the Bowridge commercial area is situated on top of the escarpment, the photographic evidence from the hearing indicates that the subject site backs onto a thickly wooded area which extends down the escarpment into the residential area of Bowness below. Pedestrians can use a dirt pathway that links the residential area and the Bowridge commercial area, but the only paved access for pedestrians from the community of Bowness is 83 Street, which is several blocks to the west of the subject site. Consequently, for those individuals travelling by foot with large loads in shopping carts, the only route to access the proposed bottle depot is along roads with no sidewalks.

26 The applicant provided information regarding the bottle depot his company operates in Banff and cited, on several occasions, this operation as an example, in response to the issues raised by the appellants. The Board, however, places no weight on this evidence due to the fact that Banff is in a different jurisdiction and land use planning scenario. In rebuttal, the appellants stated that the Banff bottle depot is located in the town's industrial area.

27 Bottles, beverage containers, and/ or cans which can be returned for a refund of the deposit are, in effect, a commodity that has a value. Consequently, it seems reasonable to expect that a carefully laid out security plan would be in place for a facility that handles the refunding of money in exchange for returned beverage containers. The need for a carefully considered security plan is especially relevant in this case, considering that the subject site is bounded along one side by a relatively isolated and densely wooded area extending down the escarpment into the Bowness Community and the Bow river valley. Few, if any, details were provided by the applicant regarding security management at the site. When asked what security features or installations would be present on-site, the applicant was, in the Board's view, not specific in providing details about how the site and, in particular, its security would be managed both during and outside the normal hours of operation.

28 When asked about hours of operation, the applicant stated that he requests the same hours as the Banff bottle depot, as well as the hours allowed for other bottle depots in the city of Calgary, namely 9 a.m. to 6:30 p.m. Mondays through Fridays; 9 a.m. to 5 p.m. on Saturdays; and 12 (noon) to 5 p.m. on Sundays. He did not offer or indicate he would be willing to revise or reduce the hours of operation of the subject site in order to accommodate the concerns of local businesses, or to avoid exacerbating traffic congestion.

29 In response to questioning by the Board, neither Mr. Mather nor Mr. Lee were able to provide specifics regarding the level of noise that would be produced from the rooftop fan/ exhaust system of the proposed development. As an industrial sized fan/ exhaust system would be required given the size of the proposed building, noise from such a fan system could impact adjacent or nearby businesses that have openable windows or balconies, such as the hotel across the street.

30 Moreover, the Board takes into consideration the size of the proposed building on the parcel. On this basis, the Board concludes that the scale of the proposed bottle depot building is significant for a use and development of this nature on this site and in this location. Furthermore, in terms of size, the Board finds that the required Bylaw relaxations are substantive, in particular the relatively large front yard landscaping and setback relaxations that would be needed to accommodate parking. In addition, the development also requires a substantial parking relaxation.

31 In addition, given the close proximity of the hotel immediately across the street from the proposed development, the Board, based on the evidence, finds that the proposed use and development, due to its operational nature, and the proposed building scale and site design, would have an impact on the use and enjoyment of the hotel property. The proposed development will result in increased traffic to and from the site, including customers, employees and transport trucks that pick up the collected containers from the bottle depot. Given the difficult, twisted and conglomerated road network in the area, the somewhat isolated location of the area that includes busy restaurants and hotels, and the fact that this road system is already congested, additional traffic to and from the proposed development could negatively impact on the hotel across the street as well as other businesses in the vicinity of the site. In the Board's opinion, increased traffic resulting from the proposed development is a safety hazard to the travelling public that visits the hotel and to guests from the hotel who, on foot, visit the nearby restaurants and businesses. Further, the businesses in the area currently experience transients and people panhandling, which cause concerns for these businesses. The evidence from a nearby community and the Calgary Police Service indicates that bottle depots attract transients, bottle pickers and panhandling people, which can have an impact on the community and the attractiveness of the area. The Board, based on all the evidence, finds that the proposed development could increase these concerns, and could impede on the attractiveness and safety of the area for the travelling public. Thus, from a planning perspective, the proposed development will negatively affect the surrounding businesses, in particular the hotel, which is immediately across the street from the site.

32 Having regard to the intensity of the use, and taking into account the merits of the application, the Board, based on the evidence and aforementioned factors, finds that the proposed development and the required relaxations would have a negative impact on the existing businesses in the immediate area. Therefore, the required relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

33 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the required relaxations for the development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

34 Having regard to sound planning considerations, the Board, based the evidence, finds that the proposed development is not appropriate for the subject site and is not

compatible with the adjacent developments and neighbourhood. As stated, above, the proposed development is not in keeping with the objectives of the ARP.

35 In reviewing and weighing all the evidence, the Board thus concludes that the subject application from a planning perspective does not warrant approval.

36 Pursuant to section 641 of the *Municipal Government Act*, the Board finds that the Development Authority did not follow the directions of Council as it did not exercise its discretion appropriately in this case.

37 For the reasons stated, the Board allows the appeal and overturns the decision of the Development Authority.

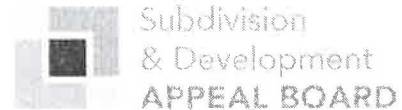
38 Therefore, the development permit is null and void.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 15th day of October, 2010

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CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2015 CGYSDAB 026

Case Name: SDAB2015-0026 (Re)

File No: DP2014-1760

Appeals by: Sydney Empson, representing the Bowness Community Association; Sophie Stocking; Ronald Kinniburgh, representing RockPointe Church; and Heather Craigdallie, represented by Steve McBride

Appeals against: Development Authority of The City of Calgary

Hearing date: March 12, 2015, May 19, 2015 and June 02, 2015

Decision date: July 15, 2015

Members present: Rick Grol, Chairman
Kerry Armstrong
Jo Anne Atkins
Jeff Gilmour
Heather Hiscock
Natasha Pashak

DECISION

Basis of appeals:

These are appeals from an approval by the Development Authority for a development permit made on the application of **Manu Chugh Architect** for a **new: bottle return depot, offices, and retail store at 60 Bowridge Drive NW.**

Description of Application:

The appeals before the Subdivision and Development Appeal Board (Board) deal with an approval by the Development Authority of a development permit application for a new bottle return depot, offices and retail store at 60 Bowridge Drive NW. The property is located in the community of Bowness and has a land use designation of DC Direct Control District pursuant to Bylaw 92Z95 in conjunction with Land Use Bylaw 1P2007.

Adjournment:

On March 12, 2015, the hearing commenced with consideration of procedural issues. The Board adjourned the hearing to May 19, 2015, with the consent of all parties.

Hearing:

The Board heard verbal submissions from:

Andy Orr, representing the Development Authority;
Michael Sydenham, representing The City of Calgary Transportation Planning department;
Kenneth Melanson, representing the Development Authority;
Steve McBride, representing Heather Craigdallie, an appellant on behalf of Four Points by Sheraton Hotel, in favour of the appeal;
Sydney Empson, representing the Bowness Community Association, an appellant, in favour of the appeal;
Paul Sipos, an affected neighbour, in favour of the appeal;
Duane Van Winkle with RockPointe Church, representing Ronald Kinniburgh, an appellant, in favour of the appeal;
Sophie Stocking, an appellant, in favour of the appeal;
Linda Flanagan, an affected neighbour, in favour of the appeal;
Bonnie Anderson, of Bennett Jones LLP, legal counsel for the applicant, in opposition to the appeal;
Madelaine King, Planning Consultant with Madelaine & Associates, in opposition to the appeal;
Kulwant Dhillon, the operator of the proposed development, in opposition to the appeal;
Manu Chugh of Manu Chugh Architect Ltd., the applicant, in opposition to the appeal;

Amrit Uppal with Bunt & Associates Engineering (Alberta) Ltd., in opposition to the appeal;
Dr. Ezekiel Dada with Bunt & Associates Engineering (Alberta) Ltd., in opposition to the appeal;
Samuel Lacrompe, of Patching Associates Acoustical Engineering Ltd., in opposition to the appeal; and
Jason Barabonoff with Level Consulting Engineers Ltd., in opposition to 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 appellants, applicant and any other party to the appeal.

Development Authority's Submission

The Development Authority's representative, Mr. Orr, presented exhibits including the report, maps, viewgraphs, relaxation chart and photographs. He submitted the following: [unedited]

The exhibits for the item are the report, viewgraphs and power point. The item being presented is an appeal of the Development Authority's decision to approve an application for a new bottle return depot, offices, and retail store located at 60 Bowridge Drive NW in the community of Bowness. The site is designated DC Direct Control District 92Z95 under the C-6 Highway Commercial district guidelines of Bylaw 2P80, having a specific absence of Automotive uses. This is a discretionary use application in this DC district. The site has significant slope on its northern portion and has a limited developable area. For information to the Board a DP application for a bottle depot was denied by the Board on October 15, 2010.

From the broad aerial view you can see that there is a significant portion of the parcel consisting of greenery, on a severe slope and undevelopable. There are self storage uses to the Northwest of the parcel as well as one to the south, which also has a church and recently constructed office/storage buildings abutting the parcel to the east. The Four Points hotel abuts the site to the south, as well as some retails uses.

Abutting to the greenbelt area to the north are single detached dwellings. The site was notice posted and circulated to the community association and other effected parties. Objections were received concerning the inappropriateness of the use, odour, noise, and parking issues. The site plan shows the large area of the parcel with a width over 88 metres and

depth over 122 metres. The top of escarpment line is indicated in yellow and it indicates the limitations of development on the parcel. Specifically the DC requires a 60 metres setback from the escarpment line for new development.

The applicant is providing a series of trees along the front setback to screen the parking area and the red line represents the 6m setback requirement of the LUB, which is being respected except for the retail portion of the building. There is a wide extended sidewalk area in front of the retail space with a number of glass openings to provide good pedestrian movement.

On the front elevation facing Bowridge Drive NW you can see the door openings and significant glass for this retail space while also noting that the 12 metres height max. shown by the red line is being well respected with this proposal which is 8.4 metres in height well under the 12m maximum. There is also a mix of composite metal panels, glass spandrels and wood screening for the loading areas provided. The rear elevation facing abutting single detached dwellings has fewer windows, confined to the upper level only consisting largely of composite metal exterior materials.

The west side elevation abutting an existing storage facility has no windows with precast concrete material and the east elevation abutting a new office/storage building has a mix of concrete and composite metal treatments with window openings on both levels. The main floor has retail space visible and orientated towards the street and the bottle depot is less visible located behind the retail space. The second floor is only partially developed with an office space only, with a large portion open to below.

There are relaxations associated with the proposal:

- Section 40(3)(a), front yard minimum of 6 metres applies to all street frontages. Plans indicate a front setback of 4.0 metres (-2.0) – a 33.3 per cent relaxation granted. While the front setback is not to the standard of the Direct Control (DC) land use it is relaxable and is required for the retail portion of the building. This allows for an extended sidewalk along Bowridge Drive NW;
- Section 40(3)(f), minimum landscape area. Plans indicate the front landscaped area to be 351.56 square metres (-118.54 metres), a 25.2 per cent relaxation of the front setback. Portions will be landscaped and the remaining will assist in providing enlarged public sidewalk interface.
- Section 18(3) and 40(3)(i), Parking. The parking requirement is 5.5 stalls per 93 square metres of net floor area (NFA) for bottle return depot and retail store uses. For office use the parking standard is 1 stall per 46 metres of NFA. A total of 67 stalls are required. Plans

indicate a total of 28 parking stalls have been provided, and 67 are required. This 29 stall deficiency is a 58 percent relaxation. Although significant, given that the relaxation is correctly based on a 2P80 DC Bylaw rule, the current standards would result in a much less deficiency. In addition parking can be shared between the proposed uses and traffic from the bottle depot will typically peak on weekends when the office use will likely be closed. No objection from Transportation was noted. Relaxation granted.

The DC for the site is for highway commercial uses, with the deletion of a number of auto related uses. This DC is relevant to two parcels, one of which has been developed for self storage purposes. It specifically states highway commercial uses that exclude automotive uses should be considered appropriate and in this case bottle depot, retail store and office are all listed uses in the C-6 land use district. In addition as stated, the proposed bldg is only 8.4m height well under the height maximum of 12 metres and not intended to be a prominent feature when viewed from the escarpment.

The Development Authority would also note to the Board that on page 151 of your report the beverage container drop off depot report to Council which was presented to CPC in October of 2014 and later passed by Bylaw 37P2014 by Council specifically notes that the Beverage Container Management Board has a responsibility to provide access to bottle depots and Calgary is currently underserved by this use. Specifically, the red dot shows the location proposed and that there are no others within the recommended 3 kilometres distance of the parcel.

In conclusion, the Authority felt the application was respectful of the intent of the DC, ARP, and the requested relaxations were reasonable. The application was approved as per the conditions noted in your package.

On questioning from the Board, Mr. Sydenham from The City of Calgary Transportation department advised that construction of the new interchange at Bowfort Road and 16 Avenue NE is scheduled to begin this spring and summer, and anticipated to open in the fall of 2016. He stated that he agrees with the Traffic Impact Assessment (TIA) stating that currently traffic is an issue in this area which is the reason the roadway network is being upgraded. However, in his opinion this upgrade would alleviate the traffic congestion that currently is occurring. He also advised that 67 parking stalls are required and 27 are provided instead of 28 as one of the stalls has to be eliminated in order to allow for space for vehicles to turn around (in accordance with prior to release condition number 8 of the permit).

Mr. Orr confirmed that as 67 parking stalls are required and 27 stalls are provided and approved, there is a relaxation of 40 parking stalls.

Appellants' Submissions

Mr. McBride, representing Heather Craigdallie, an appellant on behalf of Four Points by Sheraton Hotel, spoke at the hearing. This appellant submitted in their notice of appeal that the development does not meet the standards of Land Use Bylaw 1P2007 and requires relaxations and that the development does not meet the criteria of highway commercial as defined in the Bowness Area Redevelopment Plan. At the hearing Mr. McBride submitted materials and elaborated on their concerns regarding the development.

Mr. McBride, among other things, referenced Board decision SDAB2010-0169 regarding a bottle return depot at the subject property in which the Board upheld the appeal. He pointed out that this decision was upheld by the Court of Appeal. He submitted that nothing of substance has changed. The only notable changes are the increased size of the development requiring greater relaxations to accommodate parking and setbacks. He further referred to the Area Redevelopment Plan both in terms of the setback from the escarpment and the statement that the highway commercial area should support uses that provide service to the travelling public.

He also addressed the social issues regarding bottle depots. Further, in his opinion the Development Authority's reference to Land Use Bylaw 1P2007 and the C-COR3 District is irrelevant. The site still remains Direct Control District with C-6 Highway Commercial rules of Land Use Bylaw 2P80. The City cannot pick and choose which land use district aspects of a C-COR3 District it wishes to apply. The discretionary use application for this site is additionally limited by the ARP and again the development does not, in their opinion, meet the use intended or envisioned for the site.

In addition, Mr. McBride submitted that the planner stated that evenings and weekends would be the peak times for the operation of the bottle depot and that the mixed use office component would not be influencing the facility's parking. Mr. McBride stated that this would be the peak travelling times for the hotels, fast and full service restaurants, and the RockPointe Church. He pointed out that the Bylaw relaxation is now 40 parking stalls and the lack of parking will be a burden for the surrounding businesses and services.

Mr. McBride also pointed out that the Development Authority failed to note that 8 of the parking stalls encroach upon the required minimum setback area (from the escarpment) as directed by the Direct Control Bylaw and that this relaxation is not noted. The Bylaw relaxation for the parking stall is greater than 60 percent.

In his opinion the proposed interchange and roundabouts will address the traffic flow on the TransCanada Highway and Bowfort Road but access to Bowfort Road from Bowridge Drive will still remain a bottleneck during peak travel times creating long backups of traffic on Bowridge Drive and Bowridge Crescent. The addition of the bottle depot will exacerbate this issue during the pm peak. Even after completion of the road upgrades it will be years before there is any measurable means of traffic patterns in the

area as the developments in the area will constantly be generating more trips as the area grows.

He further advised that the area is predominantly recreational destination geared to families, sport teams, both professional and recreational, University and school students. The hotels maintain a relaxed atmosphere with little in the way of restricted access. The proposed bottle depot would dramatically change that and impede on the attractiveness and safety for the travelling public and that comes at a cost to the individual business owners.

In conclusion, Mr. McBride stated that the development will have a negative impact on the existing businesses and the community and further it would unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use and enjoyment of the neighbouring parcels of land.

Ms. Empson appeared at the hearing on behalf of the Bowness Community Association. In summary, she submitted that the proposed development will encroach on the minimum setback of 60 feet required in the Direct Control Bylaw and that the proposed development does not comply with the Bowness Area Redevelopment Plan, section 8, Policies – Highway Commercial 1. The bottle depot is not a business that supports the travelling public but rather is a predominantly auto centered use supported by the local area population.

She further raised issues regarding: Traffic and parking; landscaping relaxation; social issues pertaining to bottle depots; and slope stability analysis for the escarpment slope located at the north portion of the property. Regarding the Council report with respect to making bottle depots in the C-COR3 District a permitted use, she stated that the site is zoned Direct Control under Land Use Bylaw 2P80 and as such bottle depot use is a discretionary use and not a permitted use in this case.

Ronald Kinniburgh filed an appeal on behalf of RockPointe Church. At the hearing Mr. Van Winkle representing RockPointe Church, an appellant, made submissions. RockPointe Church, owner of the adjacent property, expressed concerns regarding the proposed development: parking challenges in the area; traffic congestion; height of the building and environmental issues (odours, noise, etc.). The Church has a congregation of approximately 800 people, half attend on Saturday evening and the other half on Sunday morning. He stated that the Church does not have sufficient parking to accommodate the congregation as they did not seek any relaxations when they applied for their development permit; they simply reduced the size of the building to match the parking they could provide; therefore, street parking is used on the weekends. He also stated they were concerned about noise and odours, particularly because their Church is located directly to the east of the proposed development and the prevailing winds would increase the negative impact on their property.

Ms. Stocking, an appellant who resides at 7935 33 Avenue NW, to the north of the proposed development opposes the development because of: (1) The bottle depot will

back onto a green reserve escarpment that connects directly to the residents' back yards on 33 Avenue. In the past there have been issues with homeless people camping, partying, and littering in this green reserve; (2) Noise and smell from the bottle depot will travel down the escarpment negatively affecting the residents on 33 Avenue NW; (3) Foot traffic from the homeless subculture will increase; (4) Traffic congestion into and out of the Bowridge industrial area is already an issue due to only one exit onto Bowfort Road. Traffic to the bottle depot would worsen this situation; (5) This section of the city is well supplied with bottle depots; another would be redundant; and (6) A bottle depot does not do anything to enhance the hospitality related businesses surrounding the site. The area should serve as a hospitality showcase.

At the hearing Ms. Stocking stated that in her opinion the residents on 33 Avenue NW are the most directly affected by the proposed development as their homes are below the escarpment. She expressed concern about bottle pickers and the proximity of two liquor stores in the area. The pathways on the escarpment will allow bottle pickers to push carts up to the bottle depot.

Affected Persons' Submission

Paul Sipos, who is the Chair of the Bowness Planning & Development Committee and Business Revitalization Zone (BRZ) and resides in the community, expressed opposition to the proposed development. In his opinion, office and retail are appropriate in this location, however, a bottle depot is not. He has a restaurant in Bowness and he uses the bottle depot in Bowness. The area is really congested and he personally would not use the proposed depot.

Ms. Flanagan, an affected neighbour, read from her exhibit and advised that she is opposed to the proposed development.

Applicant's Submission

Ms. Anderson legal counsel for the applicant, submitted a PowerPoint presentation and spoke in opposition to the appeal. She showed a sketch of the proposed development and pointed out that there are a substantial number of windows along the south side of the proposed building looking towards Bowridge Drive in order to have "eyes" on the street; with the entrance off to the eastern side. She reviewed the slides with the Board and elaborated on the site and how the proposed development would be positioned and to give context of the surrounding area. She stated that often escarpment area is taken as environmental reserve; however, because this area has not been subdivided in a very long time, environmental reserve has not been taken. Therefore there are large parts of private parcels that are on the escarpment.

The proposed development is located in the Highway Commercial Area and is unique in the sense that it is relatively isolated from Bowness due to the barriers created by the escarpment, the topography to the west and the Trans-Canada Highway to the south. There are two tiers of development in the Highway Commercial Area; the first tier is

typically highway commercial uses (motels, service stations and fast food outlets); in this case they all have C-COR3 zoning and border the highway. She elaborated on what is located there. The second tier has the widest range of existing uses and in this location there are five different land use designations for these sites. She elaborated on what is located there. In the appellants' submission there is some suggestion that the use is inappropriate; however, in her opinion the Direct Control Bylaw incorporates the C-6 District, which in its purpose statement provides for certain commercial uses which, in order to serve the motoring public, locate on streets with heavy traffic volumes and a high level of exposure. Council did a full review of what they thought was appropriate for this Direct Control District and deleted uses and added uses, with bottle return depots being an included use.

In regard to meeting the Bowness ARP requirements, the Direct Control Bylaw and ARP were adopted at the same time; when looking at the list of uses relating to the motoring public, in her opinion, it is fair to assume that the purpose of the C-6 District for this site was for uses serving clientele arriving by car mainly off the highway due to schools, childcare and arcades being included uses as these don't relate to travelling clientele. The encroachment into the escarpment is very minimal and is used for parking lot only. The small variance in the front yard setback for the retail portion is a good fit with the use and for activating the street. None of the appellants/affected neighbours have been able to substantiate with evidence that these relaxations unduly interfere with the use and enjoyment of their properties. The applicant requires a minor relaxation for landscaping; however, they feel that it is balanced out with having to leave a good majority of the site in its natural state.

There is such a high parking stall requirement on the site due to its size, because it is over 1 acre, it is looked at as a neighbourhood mall; however, the rest of the site could never be developed (70 per cent of it is required to stay in its natural state); therefore, the developable area of the site is actually less than an acre and if they were applying a reasonable interpretation for the site, it would only require 30 stalls. Furthermore, Bylaw 1P2007 does list beverage container depot as its own use and has its own parking calculation; therefore, if it applied in this case, there would only be a 36 stall requirement. Bunt & Associates did conduct an on-site count of several bottle depots within the city and they observed that approximately 19 to 27 stalls would be required to adequately service the use of the proposed development.

In regard to the upper north facing windows that were a concern due to overlooking, she explained that there is no access to those windows from the inside; they are simply there to let in light. Additional screening on the north side where garbage and loading are located will be provided.

Ms. Anderson elaborated on the noise, odour and security issues raised by the appellants. Counsel stated there will be no noise, odour or security issues associated with the development. She read an excerpt of a Calgary Planning Commission (CPC) report to Council regarding bottle depots which essentially says that bottle depots does not increase crime and that there is no evidence that bottle pickers engage in any other

activity other than finding, collecting and returning recyclables. In her opinion not a great deal of evidence was brought forward by the appellants to substantiate negative feelings and thoughts that a bottle depot will increase crime or other problems. The applicant's team canvassed residents at the base of the escarpment and had 183 households in support of the proposed development.

In regard to the parking stalls in the setback area, the applicant would make sure a slope stability assessment is done to make sure those stalls work. A second option could be to change retail use at grade to office use facing the front street which would take the parking calculation down and remove the stalls from the required setback from the escarpment.

Ms. Anderson pointed out that the hours of operation of the bottle depot will be: 9 a.m. to 5:30 p.m. Monday to Saturday; 10 a.m. to 5 p.m. on Sundays and holidays. The applicant would be agreeable to this being included in the conditions if the Board so chooses.

Ms. King, a planning consultant with Madelaine King & Associates, also made a submission on behalf of the applicant. She read pages 9 and 10 of the applicant's submission (before tab 1). She referenced the petition of people in support of the bottle depot. One of the big changes the BCMB has made is to insist on larger premises for the bottle depots in order to enable more of the operations to occur in the building to reduce noise and odours. In the report to Council, CPC actually expanded the recommendations for the depots and Council unanimously adopted them. She reached out to people and businesses in the area in March 2015 and offered meetings to discuss the proposal and the only one who took her up on her offer was the RockPointe Church. They all made it clear that there was nothing the applicant could do to make the depot acceptable in the area.

Mr. Dhillon, the proposed bottle depot operator, and Manu Chugh, the architect for the project, also addressed the Board. They, among other things, explained the operations of the bottle depot and the lay-out of the site

Mr. Uppal and Dr. Dada, of Bunt & Associates Engineering (Alberta) Ltd., addressed the Traffic Impact Assessment (TIA) that was done by their firm for the development. They confirmed that peak hour generation of the depot would be 131 on weekends. Dr. Dada advised that if the retail space would be converted to office, as suggested by the applicant, this would reduce to the required number of parking stalls. This could remove the parking stalls from the setback area of the escarpment.

Mr. Lacrompe of Patching Associates Acoustical Engineering Ltd. and Mr. Barabonoff with Level Consulting Engineers Ltd. also addressed the Board. Mr. Lacrompe stated that excluding the HVAC unit from the sound analysis, it was deemed that the noise emissions would not be atypical from any other type of building in the area of similar size. They conducted a quick internal analysis to see worst case scenario from the HVAC unit and the noise emissions would be dealt with and it would be possible to

have very low noise emissions which would either be equivalent or lower than typical rooftop HVAC units.

Mr. Barabonoff elaborated on the odour mitigating controls to be installed on the proposed development. The mechanical equipment would be no noisier than those associated with adjacent properties.

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. The development permit is null and void.

Reasons:

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's approval of a development permit for a new bottle return depot, offices and retail store at 60 Bowridge Drive NW. The property has a land use designation of DC Direct Control District pursuant to Bylaw 92Z95 in conjunction with Land Use Bylaw 1P2007.

Application

2 The application is for new bottle return depot, offices and retail store at the subject parcel that is located in the community of Bowness. According to the Development Authority the proposed development requires the following relaxations of Land Use Bylaw 2P80:

- (a) A relaxation of section 40(3)(a) for the minimum front yard setback. The front setback is 4.0 metre, requiring a 2.0 metre or 33.3 per cent relaxation;

- (b) A relaxation of section 40(3)(f) for the minimum required landscape area. The front landscaped area is 351.56 square metres resulting in a relaxation of 118.54 square metres or 25.2 per cent;
- (c) A relaxation of sections 18(3) and 40(3)(i) regarding the minimum required number of parking stalls. The approved development provides a total of 27 parking stalls while the Bylaw requires a total of 67 stalls. This results in a parking stall relaxation of 40 stalls or 59 per cent.

3 The Board notes that the proposed development also requires a relaxation of Bylaw DC92Z95, section 2(a). The parking stalls of the development encroach in the minimum 60 feet setback from the top of the escarpment.

Legislative Framework

4 The Board has particular regard to the following sections of the *Municipal Government Act*, RSA 2000, c M-26, as amended:

Section 641(4) states:

- (4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district
 - (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
 - (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

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

Section 22 states:

Reference to Other Bylaws in Direct Control Bylaws

- 22** **(1)** Where a *parcel* is designated with a Direct Control District:
- (a) pursuant to this Bylaw, a reference to a section of Part of this Bylaw within the Direct Control Bylaw is deemed to be a reference to the section on June 8, 2014, unless the Direct Control District referred to Part 10 of this Bylaw as of the effective date of the Direct Control District Bylaw;

- (b) pursuant to this Bylaw, a reference to a section of any Part other than Part 10 of this Bylaw within the Direct Control Bylaw is deemed to be a reference to the section as amended from time to time, unless a contrary intent is stated in the Direct Control Bylaw; and
 - (c) pursuant to a previous land use bylaw and such designation is continued pursuant to this Bylaw, the Direct Control Bylaw, as approved by **Council** at the time such designation was made, will continue to apply, unless a contrary intent is set out in the Bylaw designating the **parcel** Direct Control.
- (2) Direct Control Bylaws that were passed pursuant to previous land use bylaws and are denoted on the Land Use District Maps:
- (a) are hereby incorporated into and form part of this Bylaw as if repeated herein at length; and
 - (b) notwithstanding the definitions contained in this Bylaw, each Direct Control Bylaw must assume only those meanings for the terms contained therein that were intended at the date of the original passage.

Section 35 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.

6 The Board has regard to Direct Control Bylaw 92Z95 (DC Bylaw), which governs the parcel. This DC Bylaw states:

1. Land Use

The permitted and the discretionary uses contained in Section 40, C-6 Highway Commercial District, shall be the permitted and discretionary uses respectively, with the deletion of:

- auto body and paint shops;
- automotive sales and rentals;
- automotive services;
- automotive specialties;
- entertainment establishments;
- gaming establishments -bingo;
- public and quasi-public buildings.

For the purposes of this bylaw, the following shall be discretionary uses:

- restaurants;
- single detached dwellings existing at the date of approval of this bylaw.

2. Development Guidelines

The General Rules for Commercial Districts contained in Section 33 of Bylaw 2P80 and the Permitted and Discretionary Use Rules of the C-6 District shall apply unless otherwise noted below:

a. Setback

New development, including parking and outside storage, shall be set back a minimum of 60 feet from the top of the escarpment.

b. Development Plans

Approval of this application does not constitute approval of a development permit. Comprehensive plans shall be submitted to the Approving Authority as part of a development permit application.

7 The Board has regard to Land Use Bylaw 2P80. Section 40(4) of Land Use Bylaw 2P80 lists "Bottle return depots" as a discretionary use in the C-6 District.

8 The Board also has regard to the Bowness Area Redevelopment Plan (ARP). The ARP in section 3, page 10, states, in part:

6. Any new development or redevelopment adjacent to an existing escarpment (for example, development above the 33 Avenue escarpment) should provide the 60 foot (18 metre) development setback from the top of the escarpment, or a slope stability setback line as determined by a qualified engineering consultant and approved by the City Engineer, whichever setback is greater. The setback area should apply to parking areas as well as buildings. Appropriate measures should be employed by the applicant to prevent erosion or seepage impacts on slope stability, to the satisfaction of the Approving Authority.

It states on page 57, in part:

Objectives - Highway Commercial

1. Continue to establish the area fronting the Trans-Canada Highway as a commercial area catering primarily to the travelling public.
2. Integrate the land uses in this area with those to the west and south and de-emphasize linkages to the rest of Bowness.
3. Provide a framework for the orderly evolution of development between the highway commercial uses and the escarpment.
4. Ensure that new developments do not negatively impact on the escarpment lands, vegetation and wildlife.

On page 59 it states, in part:

Policies - Highway Commercial

1. In the highway commercial area, as defined on Map 6, uses that provide service to the travelling public from the Trans Canada Highway are to be supported.
2. In the area between the highway commercial zone and the escarpment, highway commercial uses that exclude automotive uses should be considered appropriate.
3. New development (including parking/storage) referred to in Policy #2 should be set back from the escarpment at least to the minimum stated in the Calgary General Municipal Plan (60 feet). Any new development should not be a prominent feature when viewed from the valley floor

4. Redevelopment of the escarpment area is strongly discouraged. Any development that may impact on those slopes may be subject to soil stability/environmental impact studies at the request of the City Engineer prior to any approvals being granted.
5. Major developments in the highway commercial area will require reinforcement of the existing water system to increase system reliability. This reinforcement will occur upon development of adjacent lands by providing a looped system (two independent feeds) into the commercial area.
6. The City, in conjunction with the Calgary Tourist & Convention Bureau and area businesses, should consider placing appropriate signage to the east and west of Bowfort Road, informing the travelling public of the services available in this area.

Analysis

9 In terms of the Board's jurisdiction respecting section 641(4)(b) of the *Municipal Government Act*, the Board notes the following.

10 The Board reviewed the textbook: Frederick A. Laux, Q.C., *Planning Law and Practice in Alberta* (3rd ed., looseleaf), (Edmonton: Juriliber, 2002), regarding the Board's jurisdiction respecting a direct control district, which states at pages 6-44 to 6-45:

Unfortunately, s.641 is somewhat unclear in that it fails to adequately address the cases where a development permit application is decided by a development authority, but the directions of council in the direct control bylaw or resolution are incomplete, ambiguous or, as in many cases, confer discretion on the development authority in respect of one or more elements of a development project. In the writer's view there exists a right of appeal on the part of either the developer or other affected persons, including objecting neighbours, and the appeal board has the power to substitute what it believes to be the appropriate decision having regard to the merits of the case, but only in respect of those matters that council has not clearly addressed. If the case involves an ambiguous direction of council, it neatly fits into s. 641(4)(b) since there is a live issue of whether council's directions have been followed.¹⁷³ Thus, for example, if the appeal board finds that council meant Y and not X, as the development authority had ruled, the board is entitled to vary the decision accordingly.¹⁷⁴

Where council has exercised less than complete direct control over a specific site that is the subject of a permit application, either because it has remained silent on some material particulars or because it has left the development authority with a discretion, a literal interpretation of s. 641(4)(b) might suggest there is no right of appeal. However, a purposive approach to interpreting Pt. 17 of the *Municipal Government Act* leads to the conclusion that a right of appeal on the permits of the development does exist. Where council has left gaps or conferred a discretion, it in fact has not exercised direct control over that element. Consequently, the rules pertaining to appeals in non-direct control districts should

apply to the extent that true direct control has not been utilized. It follows that in those circumstances the panoply of appeal rights and powers set forth in ss. 684 to 687 should apply.¹⁷⁵

And later at page 10-42:

The Act authorizes a subdivision and development appeal board to confirm, revoke or vary any decision of a development authority, any development permit or any condition attached to either, or to make or substitute any decision or permit of its own.²²⁵ Thus, where an appeal is properly before it, a board has the same plenary power over the matter as did the planning authority whose decision is under appeal.²²⁷ [...]

11 It is established law that the *Municipal Government Act* and a land use bylaw must be interpreted broadly. In determining this issue, the Board takes into consideration the purposive and contextual approach to the interpretation of statutory legislation. The Board reviewed the purpose of the *Municipal Government Act* and used a broad and purposive approach to interpreting the Act consistent with the Supreme Court of Canada's approach to statutory interpretation as confirmed in *United Taxi v. Calgary*, [2004] 1 SCR 485, 2004 SCC 19, at paras 6-8, and *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 SCR 559, 2002 SCC 42, at para. 26, and *R. ex rel Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, [2005] 3 SCR 425, 2005 SCC 70 (SCC), at para 18, which latter cases emphasize that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. The contextual approach requires that the words chosen must be assessed in the entire context in which they have been used. The words must be given their plain and ordinary meaning as the context requires. The Alberta Court of Appeal has adopted this approach in many cases: *Love v. Flagstaff (County)*, 2002 ABCA 292, at paras 19-21, and *Desaulniers v. Clearwater (County)*, 2007 ABCA 71, at para 52. This approach is also consistent with section 10 of the *Interpretation Act*, RSA 2000, c I-8, which provides that every provincial enactment shall be given a fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

12 In addition, the Board takes into account the express wording of the DC Bylaw and Land Use Bylaw 1P2007 itself. Pursuant to section 10(1)(c) of Land Use Bylaw 1P2007 the words must be given their plain and ordinary meaning as the context requires.

13 Pursuant to section 22(2)(a) of Land Use Bylaw 1P2007, Direct Control Bylaws are part of Land Use Bylaw 1P2007.

14 Pursuant to section 22(2)(b) of Land Use Bylaw 1P2007, the definitions of Land Use Bylaw 2P80 apply, because at the time the subject parcel was designated DC Direct Control District, Land Use Bylaw 2P80 was in force.

15 DC Bylaws of The City of Calgary are typically a hybrid between complete development control over a site in the Direct Control District and the rules of the Land Use Bylaw. The DC Bylaws often provide that the Development Authority is given discretion either with respect to the permitted and discretionary uses of a proposed development and/ or with respect to development standards, except where expressly stipulated otherwise. Generally DC Bylaws of The City of Calgary Council do not dictate complete control over a specific site that is the subject of a development permit application and generally the Development Authority is granted discretion.

16 In this case, the express directions of The City of Calgary Council in the DC Bylaw regarding permitted and discretionary uses in the subject DC Direct Control District are limited to the deletion of certain permitted and discretionary uses and Development Guidelines for: (a) Setback and (b) Development Plans. To the extent that Council did not provide directions to the Development Authority in the subject DC Bylaw, Part 1 and 2 of Land Use Bylaw 1P2007 and the applicable provisions of Land Use Bylaw 2P80 (as referred to in section 2 of the DC Bylaw) apply.

17 Where the DC Bylaw and Land Use Bylaw 2P80 have given discretion to the Development Authority, the Board upon appeal re-exercises the same discretion. This is in accordance with how the Board consistently exercises its powers pursuant to section 687(3) and 641(4) of the *Municipal Government Act*.

18 The Board agrees with Laux that the Board upon appeal steps into the shoes of the Development Authority where a land use bylaw and DC Bylaw provides discretion to the Development Authority.

19 Pursuant to section 1 of the DC Bylaw in conjunction with section 40 of Land Use Bylaw 2P80, the use of "Bottle return depot" is a discretionary use in the DC District.

20 Pursuant to section 2 of the DC Bylaw, the General Rules for Commercial Districts contained in section 33 of Land Use Bylaw 2P80 and the Permitted and Discretionary Use Rules of the C-6 District shall apply except for front yard unless otherwise provided in section 2(a) and (b) of DC Bylaw. Section 2(a), which stipulates a minimum setback for a new development, sets a development standard.

21 The Board notes that the development is a discretionary use. Council has conferred a discretion over the use. Therefore, the development permit application can either be granted or refused on the basis of sound planning considerations.

22 The Development Authority and applicant are of the opinion that sections 11(2) and (3) of Land Use Bylaw 2P80 apply. Respectfully, the Board disagrees. Pursuant to section 2(1) of Land Use Bylaw 1P2007, Land Use Bylaw 2P80 has been repealed. Therefore, the powers and authority of the Development Authority are established pursuant to Land Use Bylaw 1P2007 and stem from this Bylaw, not from Land Use Bylaw 2P80. Therefore, Part 1 and Part 2 of Land Use Bylaw 1P2007, which includes the administrative and procedural provisions of the Bylaw pertaining to the

Development Authority, apply to the subject development permit application. Regarding the Development Authority's power to relax or vary the Land Use Bylaw (including a DC District Control District) sections 31 for permitted uses and 36 for discretionary uses apply respectively.

23 Based on purposive and contextual interpretation of the DC Bylaw and the plain and ordinary meaning of the words in this Bylaw, and having regard to aforementioned factors, the Board finds that the Board in this case has jurisdiction to deal with all the merits of the appeal and the development permit application insofar as they are relevant and based on sound planning considerations. Therefore, section 35 of Land Use Bylaw 1P2007 applies equally to the Board. Moreover, when determining an appeal the Board pursuant to section 687(3)(a.1) of the *Municipal Government Act* must comply with the land use bylaw in effect (subject to the Board's relaxation authority pursuant to section 687(3)(d)).

24 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellants, applicant, affected persons and Development Authority. The Board considered all relevant arguments either against or in support of the proposed development.

25 The Board reviewed the context of the proposed development and any required relaxations, having regard to sound planning considerations, the merits of the application, the circumstances of the case, and the evidence presented.

26 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). Subsection (a) of this section requires that the plans and policies affecting the parcel be taken into account. Therefore, the ARP and Infill Guidelines must be taken into account by the Development Authority. In addition, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood as well as the merits of the proposed development, access and transportation requirements, and sound planning principles, among other things, must be taken into account.

27 Pursuant to section 687(3)(a.1) of the *Municipal Government Act* the Board, in determining an appeal, must comply with statutory plans. The ARP is a statutory plan.

28 While the ARP does not have the same status as a land use bylaw, the Development Authority has discretion to implement the policies of the ARP, in particular where the ARP does not use mandatory, but directive language. Even though the ARP is a policy document and does not have the same status as a land use bylaw, which is a regulatory document, it provides guidance for new development. In the Board's view the ARP provides clear direction in this case, which will be addressed below.

29 The Development Authority referenced that the site would have transitioned to the C-COR3 District land use designation under Land Use Bylaw 1P2007 if it were not for

the geodetic issue related to the setback from the escarpment as per the DC Bylaw. In addition, the Development Authority referenced Report M-2014-022, *Administration Report to Calgary Planning Commission 2014 October 2014* (contained on pages 150 – 187 of the Board report). The Development Authority pointed out that a bottle depot is a permitted use in the C-COR3 District and that the parking requirements of Land Use Bylaw 1P2007 would be lower for this use.

30 The Board finds these arguments not persuasive. First, the fact is that the rules of the DC Bylaw and applicable rules of Land Use Bylaw 2P80 apply, not Land Use Bylaw 1P2007 rules for development. The site is not a C-COR3 site. Second, the Development Authority failed to mention that in the C-COR3 District of Land Use Bylaw 1P2007 (section 814(1)) the use of Bottle Depots is only a permitted use in existing approved buildings. In proposed buildings it is a discretionary use development. The proposed development is for a new building, therefore there is no difference between the DC Bylaw and associated Land Use Bylaw 2P80 and Land Use Bylaw 1P2007 with respect to the subject site. Third, the report among other things states: "Administration believes that new buildings should have a discretionary review, to ensure that appropriate site design and layout is managed appropriately." In the Board's view, having regard to the report, this implies that Council's intent is that the locations of bottle depots need a careful review and that a location of a bottle depot needs to be sensitive to the interface between the depot and adjacent uses. Further, the Board notes that the report states that depots are a mix between a commercial and industrial use; that as depots get busier, garbage and debris overspill outside of the depot, and that depots can create both real and perceived issues.

31 Furthermore, the Board notes that the aforementioned report in the chart regarding C-COR3 on page 25 indicates that bottle depots are "Permitted in existing buildings because site has been designed and is appropriate for a depot based on proximity to major roads, industrial areas, large site sizes, and no residential directly abutting." (Page 174 of the Board report).

32 The Board finds that there is no evidence of increased crime associated with bottle depots as alleged by some of the appellants. Simply raising an issue without more is not evidence (*Gendron v. Calgary (City)* 2009 ABCA 367, at para. 16). There must be some basis in fact. The Board further gives no weight to the arguments regarding alleged social issues related to bottle depots. However, the Board notes that Report M-2014-022 does say that communities do, legitimately, see an increase in bottle pickers in areas where depots are located.

33 The Board notes that in this case there is abutting residential developments directly to the north of the subject parcel, a church and two nearby hotels. From a planning perspective this is a factor to be considered.

34 The Board notes that the objectives and policies of the ARP for the highway commercial area, that encompasses the subject site, give direction for uses in this area that cater to and provide services to the travelling public from the Trans Canada

Highway (page 57 of the ARP). In addition the objectives of the ARP are to “[i]ntegrate the land uses in this area with those to the west and south and de-emphasize linkages to the rest of Bowness” and to “[p]rovide a framework for the orderly evolution of development between the highway commercial uses and the escarpment”.

35 The Board acknowledges the applicant referenced the difference between the first tier developments and second tier developments (adjacent to the escarpment) in the immediate area (the 43-hectare triangle island of development area off the Trans-Canada Highway); however, in the Board’s view, this is from a planning perspective less pivotal as essentially both tiers are highly visible from the highway.

36 The existing uses/ developments in this area are in the Board’s opinion for the most part highway oriented and cater to the travelling public. The restaurants, fast food outlets, and two hotels exemplify the highway orientation and are aimed towards the traveling public on the highway. The proposed development is, instead, intended to target the residents in the west and northwest communities of the city (including the Bowness community). The Board thus concurs with the appellants that the proposed development is not highway oriented as contemplated in the ARP.

37 Furthermore, the Board finds that the proposed development would also service and connect the proposed use to the Bowness community, contrary to the intent of the ARP to “de-emphasize linkages to the rest of Bowness”. The proposed bottle depot development actually links the area with the community of Bowness, which is discouraged under the ARP. Although the proposed bottle depot use serves a larger area on the west side of the city, in the Board’s view due to its location it also likely will be used by Bowness residents.

38 In addition, the Board, in weighing the evidence, finds that the proposed development does not integrate well with the surrounding food establishments, hotels, and immediate residential area to the north as envisioned by the ARP.

39 Based on the evidence and the aforementioned factors, the Board finds that the proposed development does not meet the ARP.

40 The Board places no weight on the petitions submitted by the parties, neither from the appellants nor from the applicant. These petitions are form based and the Board does not know what information was provided to the persons who signed the petitions. Nevertheless, the Board does note that the residents of 33 Avenue NW which live in close proximity to the proposed development are opposed to the development.

41 In terms of the required parking relaxation and the traffic issues, the Board notes the following. There is evidence of parking problems in the area, which is consistent with written and verbal testimony from appellants and affected neighbours. The applicant referenced the Transportation Impact Assessment (TIA) report by Bunt & Associates in support of the application and of the required parking relaxation. The Bunt report further states that post-interchange traffic will be acceptable and can accommodate the

proposed uses. According to Bunt based on the counts at five different bottle depots in the city 19 to 27 parking stalls would be required to adequately service the uses of the proposed development.

42 The evidence of the appellants is that there is traffic congestion at the intersection of Bowfort Road and that there is parking congestion on the immediate roads. Photographs indicate parked cars on the streets. The Four Points Hotel is concerned about overflow of parking from the development onto their parking lot. Even after upgrade of the road network and traffic circles, in the appellant's opinion access to Bowfort Road from Bowridge Drive will still remain a bottleneck during peak travel times.

43 The Board, in weighing the evidence, finds the bottle depots that are analyzed in the Bunt report for comparison in terms of traffic pattern and parking needs of bottle depots are not representative. In the Board's opinion those bottle depots have entirely different location characteristics than the location of the proposed development. From the Bunt report (5.2 Observed Demand, pages 46–49) the Board notes that in the tables (report charts) the observed peak demand varies considerably between those depots. The Board is not convinced that the average observed parking demand would apply to the proposed depot. Further it is reasonable to expect that because of the location in close proximity to the Trans Canada Highway, that the subject bottle depot will attract more customers and traffic than the other depots that were observed and accordingly would have a higher parking demand. Thus it would necessitate more parking stalls. The Board also questions whether the spot parking counts of the surrounding streets in the Bunt report are sufficiently representative of the accurate parking demand on any given time and day. In the Board's view the number of spot counts was too limited (2 days only) in terms of days and time of day to be reflective of the parking situation of a depot.

44 The Board, in weighing the evidence, finds that the parking relaxation of 40 stalls is substantial in terms of size, magnitude and impact. It is a 60 per cent relaxation. From a planning perspective this is a pertinent factor. Even if the parking requirements of Land Use Bylaw 1P2007 would be applied, the development would require 36 stalls. As the site provides 27 stalls, the relaxation in that case would be 9 stalls, which in the Board's view is not minor. If the development would comply with the setback requirements from the escarpment as required by the DC Bylaw and the 7 stalls that encroach into the setback area would be eliminated, the relaxation would amount to 16 stalls. In the Board's opinion that still would be a significant relaxation.

45 Further the Board notes that the two hotels in the vicinity of the proposed development are full of activity and have a high parking demand. In the Board's opinion a parking relaxation and the deficiency of parking for the proposed development has an impact on the adjacent and surrounding developments, in particular the Four Points Hotel and the adjoining RockPointe Church.

46 The Board acknowledges that the road network will be upgraded with the Bowfort Road interchange at the Trans Canada Highway and traffic circles, and that according

to Mr. Dada of Bunt and Mr. Sydenham of the City's Transportation Planning this would alleviate the traffic congestion that currently occurs in the area. Mr. McBride pointed out that access from Bowridge Crescent to Bowfort Road will be eliminated and may result in a different traffic pattern. Further, the Board agrees with the appellants that after completion of the road network upgrades it may be years before there is any accurately measure of the traffic patterns in the area as the developments in the area will be generating more trips as the area grows. Because the area may be more accessible after the road upgrades, the area may attract more traffic than anticipated. Therefore the Board finds there is sufficient uncertainty about the traffic pattern in the immediate area after the road network upgrade.

47 The Board accepts the applicant's evidence that the rear (north facing) windows would not result in overlooking onto the residences to the north on 33 Avenue NW as the windows are clerestory windows to let natural light into the building and are not accessible from the interior.

48 From a planning perspective, the Board further finds the required front yard setback relaxation of 33.3 per cent and landscaping relaxation of 25.2 per cent are significant. While the Board understands the rationale for these sought relaxations, in the Board's opinion this underscores that the proposed development is pushing the building envelope beyond the allowable building envelope of the Land Use Bylaw. Nonetheless, in light of the other findings of the Board these relaxations are less material for the outcome of the appeal.

49 In the Board's opinion either the parcel is too small for the development as proposed or the development is too large for the subject parcel.

50 The Board finds that Council has prescribed a development standard in section 2(a) of the DC Bylaw. The Board finds that the DC Bylaw is very specific, explicit and clear in terms of the required setback from the escarpment. Section 2(a) is especially prescriptive and in fact is the only development standard prescribed in the DC Bylaw. It expressly uses the word "shall", which in the Board's view is significant. In the Board's opinion it speaks to the context, purpose and intent of the DC Bylaw. It contains a very precise and specific development standard. The inclusion of the words "[...], including parking and outside storage, [...]" in this section underscore the specific direction of Council that parking and outside storage of new development also shall adhere to the required minimum 60 feet setback. The Board further notes that the subject DC Bylaw does not include a provision that would allow the Development Authority to relax or vary the provisions of the DC Bylaw (unlike some other DC Bylaws of The City of Calgary that include such a specific provision).

51 If the provision of section 2(d) could be relaxed as the Development Authority assumed, the intent of the drafters of the DC Bylaw, Council, would be circumvented and render a mandatory provision regarding the minimum setback meaningless.

52 Further the principles of statutory interpretation do not support the premise that general powers of granting relaxations or variances as accorded to the Development Authority in the Land Use Bylaw and to the Board in section 687(3)(d) of the *Municipal Government Act* prevail over specific provisions as stipulated in a DC Bylaw. Laux, *ibid.*, page 6-45, note 175, also seems to be of the opinion that insofar as Council prescribes a development standard in a DC Bylaw the relaxation or variance power conferred to the Board in section 687(3)(d) of the Act is not available to relax or vary the DC Bylaw. It follows that this power also would be not available to the Development Authority unless a DC Bylaw would provide otherwise (i.e. a DC Bylaw would permit a discretion to relax or vary the DC Bylaw, which in this case it does not).

53 Having regard to the express wording of the DC Bylaw, section 641 of the *Municipal Government Act*, the scheme of the Act and the Land Use Bylaw in conjunction with the DC Bylaw, and their operations, the Board finds that in this case neither the Development Authority nor the Board has the authority to relax or vary the aforementioned provisions of the DC Bylaw. As the proposed development does not comply with the minimum 60 feet setback, albeit for several parking (7) stalls, the Board finds that in this regard the proposed development does not comply with the directions of Council as set out in the aforementioned sections of the DC Bylaw. Therefore, the Development Authority did not follow the directions of Council.

54 If the Board were wrong and the Development Authority, based on the Land Use Bylaw and the Board, under section 687(3)(d) of the Act, would have the authority to relax or vary the subject section 2(a) of the DC Bylaw nothing would turn on this in this case. In any event, in light of the other findings of the Board, in particular regarding the ARP as outlined above, it is not determinative for the outcome of the appeal. For all the other reasons outlined in this decision, the Board finds that the proposed development is not compatible with the adjacent developments.

55 The argument of the Development Authority and applicant that the setback requirement of the DC Bylaw renders a large portion of the site undevelopable is in the Board's opinion not persuasive. Having regard to a purposive and contextual approach to the interpretation of the DC Bylaw and the ARP as well as the plain and ordinary meaning of the words in the DC Bylaw and the ARP, it is the intent of Council that any development on the parcel must adhere to the prescribed 60 feet setback from the escarpment in order protect the natural environment of the escarpment.

56 During the hearing the applicant proposed revisions to the development to address the setback issue from the escarpment as per the DC Bylaw. The applicant proposed to change the retail use bays to office use, which would reduce the parking stalls to 20 stalls. The development then would be able to comply with the setback requirement of the DC Bylaw (by removing the stalls that encroach into the setback area) and would not need a relaxation of the DC Bylaw. The Board, however, finds that these changes to the development are significant and would require a re-application; it would result in a different development. Furthermore, in the Board's view the change to more office uses would not be in keeping with the ARP as more office uses in the building would not be highway oriented and not cater to the travelling public.

57 On the balance of all the evidence, the Board finds that the appellants and affected residents in opposition to the development provided more compelling evidence of a planning rationale than the applicant.

58 Having regard to the intensity of the use and the merits of the application, the Board, based on the evidence and aforementioned factors, finds that the proposed development and the required relaxations would have a negative impact on the existing businesses in the immediate area. There is insufficient compelling evidence to justify the relaxations. Therefore, the required relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

59 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development and required relaxations for the development would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

60 Having regard to sound planning considerations, the Board, based the evidence, finds that the proposed development is not appropriate for the subject site and is not compatible with the adjacent developments and neighbourhood. In particular, the development is not compatible with the hotels and the adjacent church, and the adjacent residences to the north. The proposed development is not consistent with the objectives of the ARP and is from a planning perspective not appropriate for the parcel.

61 In reviewing and weighing all the evidence, the Board thus concludes that the subject application from a planning perspective does not warrant approval.

62 Pursuant to section 641 of the *Municipal Government Act*, the Board finds that the Development Authority did not follow the directions of Council as noted above and it did not exercise its discretion appropriately in this case.

Conclusion

63 For the reasons stated, the Board allows the appeal and overturns the decision of the Development Authority.

64 Therefore, the development permit is null and void.

Rick Grol, Chairman
Subdivision and Development Appeal Board

Issued on this 15th day of July, 2015

In the Court of Appeal of Alberta

Citation: 1447743 Alberta Ltd. v. Calgary (City), 2011 ABCA 138

Date: 20110506

Docket: 1001-0288-AC

Registry: Calgary

Between:

1447743 Alberta Ltd.

Applicant

- and -

**The City of Calgary, The City of Calgary Subdivision and
Development Appeal Board, Sophie Stocking, Joan Reinhardt,
Shirley Westerveld, Niki Smyth and Linda Flanagan**

Respondents

**Reasons for Decision of
The Honourable Mr. Justice Peter Martin**

Application for Leave to Appeal

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2011 ABCA 138 (CanLII)

**Reasons for Decision of
The Honourable Mr. Justice Peter Martin**

[1] The applicant, 1447743 Alberta Ltd., seeks leave to appeal a decision of the City of Calgary Subdivision and Development Appeal Board (the “Board”), in which the Board overturned the development authority’s issuance of a development permit that allowed the applicant to operate a bottle return depot located within a direct control district.

[2] Because the site is located within a direct control district, any appeal to a SDAB from a development authority is limited to “whether the development authority followed the directions of council”: *Municipal Government Act*, R.S.A. 2000, c. M-26, s. 641(4)(b). The applicant argues that the Board misinterpreted council’s directions, as reflected by the Land Use Bylaw, the Direct Control Bylaw and the Area Redevelopment Plan, though it properly concedes that the Board’s interpretation of the bylaws and the plan would likely be subject to a degree of deference on appeal.

[3] Despite the eloquent submissions of the applicant’s counsel, I do not consider this proposed ground of appeal to meet the requisite standard for leave to appeal, which requires that there be a question of law or jurisdiction of sufficient importance to merit further appeal and has a reasonable chance of success: *MGA*, s. 688. I am of the view that the Board’s interpretation of the bylaws and the statutory plan is well-supported, and would be given deference on appeal.

[4] The applicant also argues leave should be granted on the basis that the Board erred by (a) exceeding its jurisdiction and misinterpreting the Land Use Bylaw by refusing the development permit solely on the basis of use; (b) misinterpreting the Land Use Bylaw regarding the parking requirements or, alternatively, by failing to apply the appropriate test by refusing to grant a relaxation; and (c) failing to adequately consider the available evidence, and basing its decision on irrelevant or no evidence. Having carefully reviewed the materials, I am unable to identify any error on the part of the Board that gives rise to a question of law or jurisdiction of sufficient merit to warrant appeal.

[5] Accordingly, leave to appeal is denied.

Appeal heard on April 20, 2011

Memorandum filed at Calgary, Alberta
this 6th day of May, 2011

Martin J.A.

Appearances:

C.S. Davis

J.Sykes

for the Applicant

J.P. Stopa, Q.C.

for the Respondent: The City of Calgary Subdivision and Development Appeal Board