
CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2015 CGYSDAB 142

Case Name: SDAB2015-0142 (Re)

File No: DP2014-2780

Appeal by: Systemic Architecture Inc. represented by Churyl Elgart of Borden
Ladner Gervais LLP

Appeal against: Development Authority of The City of Calgary

Hearing date: December 03, 2015; March 22, 2016; April 05, 2016; April 12, 2016;
April 14, 2016; May 03, 2016 and June 23, 2016

Decision date: August 19, 2016

Board members: Rick Grol, Presiding Officer
Jo Anne Atkins
John Attrell
Meg Barker
Natasha Pashak
Joshua Selby

DECISION

Basis of appeal:

This is an appeal from a refusal by the Development Authority for a development permit made on the application of **Systemic Architecture Inc.** for a **change of use: assisted living (37 units), dwelling units (42 units), retail and consumer service; changes to site plan – addition of landscaping, parking reconfiguration and waste/recycling area reconfiguration** at 4804 Edmonton Trail NE.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with a refusal by the Development Authority of a development permit application for a change of use for: assisted living (37 units); dwelling units (42 units); retail and consumer service; and changes to site plan – addition of landscaping, parking reconfiguration and waste/recycling area reconfiguration at 4804 Edmonton Trail NE. The property is located in the community of Greenview Industrial Park and has a land use designation of Commercial – Corridor 2 (C-COR2 f3.0h46) District.

Adjournment:

On December 03, 2015 the hearing commenced with consideration of procedural issues. The Board adjourned the hearing to March 22 2016 with the consent of all parties involved. On March 22, 2016 the Board heard submissions from the Development Authority and those parties speaking in favour of the appeal. The Board adjourned the matter to April 05, 2016 to continue hearing the item. The hearing recommenced on April 05, 2016 and the Board heard submissions from those parties speaking in opposition to the appeal. The Board adjourned the item to April 12, 2016 to continue hearing the appeal. On April 12, 2016 the Board heard from the remaining parties against the appeal and further adjourned the item to April 14, 2016, at which time the hearing continued. The hearing further continued on May 03, 2016. The Board adjourned the matter to June 23, 2016 to announce its anticipated decision.

Hearing:

The Board heard verbal submissions from:

Ian Cope, representing the Development Authority;
Ken Melanson, representing the Development Authority;
Melissa Senek, of The City of Calgary Law Department, legal counsel for the Development Authority;
Lawrence Wong, of The City of Calgary Development Engineering, assisting the Development Authority;

Cheryl Elgart of Borden Ladner Gervais LLP, legal counsel for the appellant/applicant and the Calgary Drop-In & Rehab Centre Society, in favour of the appeal;

Kevin W. Keyes of Borden Ladner Gervais LLP, legal counsel for the appellant/applicant and the Calgary Drop-In & Rehab Centre Society, in favour of the appeal;

Jamie Clark, Principal Architect of Systemic Architecture Inc., the appellant/applicant, in favour of the appeal;

Debbie Newman, Executive Director of the Calgary Drop-In & Rehab Centre Society, the property owner, in favour of the appeal;

Alan Facey, Financial Director of the Calgary Drop-In & Rehab Centre Society, in favour of the appeal;

Jonathan Fesik, an affected neighbour, in favour of the appeal;

Myrna Belyea, representing 598558 Alberta Ltd. (owner McKnight Plaza) and its principal Mr. Willems, an affected neighbouring property owner, in opposition to the appeal;

Christopher S. Davis of Chris Davis Law, legal counsel for Benner Plumbing & Heating Ltd./1783673 Alberta Ltd., a neighbouring property owner, in opposition to the appeal;

Nick Zannis, co-owner of Golden Acre Garden Centre, in opposition to the appeal;

Marvin Quashnick, representing the Thorncliffe/Greenview Community Association, in opposition to the appeal;

Alison Abbott, representing the Thorncliffe/Greenview Community Association, in opposition to the appeal;

Tara Rindfliesch, founder of Greenview Cares and also representing the Thorncliffe/Greenview Community Association, in opposition to the appeal;

Gael MacLeod, representing the Thorncliffe/Greenview Community Association, in opposition to the appeal;

Brad Giddings, an affected neighbour and also representing the Thorncliffe/Greenview Community Association, in opposition to the appeal;

Elise Bieche, President of the Highland Park Community Association, in opposition to the appeal;

Anne Naumann, representing the Highland Park Community Association, in opposition to the appeal;

Greg Miller, representing the Highland Park Community Association, in opposition to the appeal;

Grant Symon, an affected neighbour, in opposition to the appeal;

Kim West, President of Greenview Business Association and Property Manager of 12 buildings nearby the subject property, in opposition to the appeal;

Nevin Merrells, an affected neighbour, in opposition to the appeal;

Patricia Thair, an affected neighbour, in opposition to the appeal;

Mitch Nixon, an affected neighbour, in opposition to the appeal;

Ruth Negata, an affected neighbour, in opposition to the appeal; and

Monique Neish, an affected neighbour, 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 appellant/applicant and any other party to the appeal.

Development Authority's Submission

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

My name is Ian Cope and I am representing the Development Authority, in this case Calgary Planning Commission, from its decision to REFUSE an application for a change of use to an assisted living facility (37 units), dwelling units (42 units), retail and consumer service with site improvements to the existing parking, waste and recycling areas and landscaping. The site is located at 4804 Edmonton Trail on the SE corner of McKnight Boulevard and Edmonton Trail and is located within a former hotel complex.

The subject site is designated Commercial – Corridor 2 (C-COR2 f3.0h46) having a maximum FAR of 3.0 and maximum height of 46 metres. The proposed uses are all permitted or discretionary uses within the district. The site is bounded on the north by a small commercial plaza and on the south by a commercial building containing a number of bays. Directly across Edmonton Trail to the west, is the residential community of Greenview. The site is bounded on the east by Nose Creek beyond which is light industrial development.

In reviewing the application, Administration considered compliance with the Land Use Bylaw, Municipal Development Plan and the Council approved policy, Planning Principles for the Location of Care Facilities and Shelters (2011). Part of the proposed application is to remove a portion of structure at the rear of the building in order to meet the setback requirements from the rear property line. With this change, the proposed development is in full compliance with the Land Use Bylaw 1P2007 both in terms of use and district rules and requirements. The MDP also supports the proposed development as it utilizes existing infrastructure, is transit supportive, results in a complete community and provides housing diversity and choice (Page 20 of SDAB package).

The proposed development also complies with the policy direction of the Planning Principles for the Location of Care Facilities and Shelters. No other facilities exist within 300 metres of the site and there is no cumulative impact as a result. Although not located within the residential community, it is located directly adjacent to the Greenview residential community and achieves full benefit of the area to support its activities. As well, being also adjacent to commercial and industrial areas affords opportunity for residents to achieve and maintain gainful employment.

The proposed development is utilizing an existing building with minor modification to bring the structure in line with the current provisions of the

Land Use Bylaw. The former hotel rooms will be reconfigured to provide independent accommodation in the form of dwelling units where other areas will be configured as an assisted living facility with common amenity spaces. The main floor will be upgraded to provide for a number of locally oriented retail and consumer service opportunities. The commercial uses will be focused on providing commercial needs for both the future residents of the facility as well as the surrounding community.

The balance of the application is a reconfiguration of the existing parking lot to incorporate landscaping in accordance with the Land Use Bylaw and general site improvements in terms of aesthetics. Existing shared parking, access and infrastructure shared with the adjacent commercial sites to the north and south will be retained. As traffic generation and parking requirements are less than was previously required by the hotel, no additional traffic studies were required.

Considerable public consultation was undertaken by the proponents of the project over a period of three years. This included meetings with area community associations as well as four public open houses. Notwithstanding a number of revisions to address issues, the proponents were unable to achieve support for the project. Numerous letters were received by administration during processing as well as by CPC at the time of decision.

At the Calgary Planning Commission meeting of 2015 October 8, CPC voted to REFUSE DP2014-2780 for the following reasons:

1. Pursuant to section 35(c) and (d) of the Land Use Bylaw (1P2007), in that the proposal negatively affects the use and enjoyment of adjacent properties; and
2. The use is not compatible with existing adjacent use due to the nature of the incompatible activities.

With respect to reason 1, CPC accepted the comments and objections contained within the numerous letters received from area residents and businesses objecting to the proposed development. With respect to reason 2, CPC considered the proximity of adjacent uses (Pay Day Loans and Liquor Stores) to be a potential detriment to the welfare of potential residents who may be at risk. Specific comments of individual CPC members in support of their vote are contained on pages 14 to 17 of the SDAB package.

Melissa Senek, of The City of Calgary Law Department, counsel for the Development Authority, advised that her written submission was in response to the submission of the appellant's counsel and to alert the Board of the breadth of the case law with respect to what the Board can consider as planning considerations. In Ms. Senek's opinion, in certain circumstances, the past behaviour and character of an applicant can be relevant planning considerations and she referenced some case law to that effect.

Ms. Senek further advised the Board that the Development Authority would not be making any further submissions regarding the merits of the development permit application and appeal.

Upon questioning from the Board, Mr. Cope referenced the history of the site and stated that the site has been used as a hotel since 1966. Over the years the site has gone through some changes and the hotel shut down in 2011. In terms of previous development permits, he advised that several permits were issued for: improvements to the hotel; other commercial buildings on the site; the commercial strip mall to the north (formerly part of the hotel site with shared parking and infrastructure); and the commercial building to the south of the subject parcel.

Mr. Cope advised that somewhere around 1989 the subject site was subdivided off from the northerly parcel and therefore a separate development permit was issued for the commercial buildings on the parcel to the north. The northerly development shares the parking with the subject site. It was one of the conditions included in that development permit. At the time Land Use Bylaw 2P80 under which the permit was issued allowed shared parking between adjacent sites. He stated that the current Land Use Bylaw does not allow this. He further explained that utilities run through the subject site to service the subdivided commercial plaza to the north and there is also an access and parking agreement to service the commercial building to the south; however, utilities are separately serviced.

The Development Authority's representative mentioned that the application proposes to reconfigure the parking lot for landscaping, reducing parking stalls not needed for the use or the other adjacent uses, and that the access to the site remains unaltered.

Ken Melanson representing the Development Authority stated that under the Land Use Bylaw the assisted living use is separate from the use of dwelling units. He mentioned that the applicable policy does not prohibit care facilities to be within 300 metres of each other, but if they are, then a further analysis needs to be done to determine the resulting impacts. In this case there is no other care facility within 300 metres. Although the proposed development includes commercial uses, no traffic study was required, as it will generate less traffic than the previous use.

He mentioned that the other commercial building to the south of the hotel on the subject site includes a car rental business and a liquor store which are operational and those are the only other uses on the site. The commercial plaza to the north includes Pay Day Loans, a restaurant, Pizza 73, a flooring company, and a couple of offices which are all operational.

Mr. Melanson stated that the boundary line on the site plan is the scope of the application; the dashed line to the right of the subject building designates the scope of the proposed development. He submitted that when the parking was calculated, it included all of the stalls on the site (250 in total, 118 within the subject DP scope area). He referenced the submitted parking calculation chart. Further, he advised that there is another commercial building on the subject site that shares the same Title. However,

the commercial plaza to the north is a separate titled parcel and therefore parking stalls associated with that site would not be included for the subject site.

He advised that during the application review one Crime Prevention Through Environmental Design (CPTED) evaluation and circulation was done which was incomplete; CPTED noted that they were not able to get on the subject site to complete the inspection. Following receipt of amended drawings, CPTED was circulated again and they were able to coordinate with the applicant to access the site and complete their inspection; however, the Development Authority never received anything back from them. He mentioned that standard protocol is that if CPTED does not send anything back to the Development Authority, then they have no objections.

He advised that the assisted living use parking requirement is one stall per three residents, which is lower than the requirement for dwelling units (0.75 stalls per unit). He explained that the assisted living use does not necessarily need to include dwelling units.

Mr. Melanson mentioned that Council policy was adopted with recent rule changes for the suite of care uses (including assisted living) and stated that there should not be similar uses within 300 metres of each other. When reviewing this application, he manually looked at all the development permits within a 300 metre buffer around the site and did not find any similar uses to the subject development. The closest one he could find was a care use located about 450 to 500 metres away.

Regarding the waste facilities, Mr. Wong of The City of Calgary Development Engineering stated that, with respect to most of the commercial sites in the city, waste is collected by private operators and that the City has moved towards new guidelines in terms of waste management. The onus is on the site operator to ensure that waste is managed and taken off-site. He stated that, in his opinion, the proposed three waste bins would be sufficient to serve the needs of the development.

The Development Authority's representatives further proposed a change to the draft set of conditions of approval that was presented by the City Administration to CPC. They pertain to permanent conditions numbers 25, 32 and a new condition to be added regarding stormwater management.

Mr. Cope advised that The City of Calgary has no plans to widen McKnight Boulevard west of Deerfoot Trail and there is nothing in the City's ten-year budget for road improvements at this location. There is no road widening requirement for this area at this time.

Appellant/Applicant's Submission

The appellant, Systemic Architecture Inc., which is also the applicant, submitted in their notice of appeal that the Development Authority, in reaching its decision, failed to review development permit application DP2014-2780 on the basis of sound planning principles and took into account irrelevant considerations. In its opinion, this gave rise to

unfounded conclusions that the proposed change of use of the existing development would negatively affect the use and enjoyment of adjacent properties and would not be compatible with the existing adjacent uses.

Cheryl Elgart of Borden Ladner Gervais LLP, counsel for the appellant and the Calgary Drop-In & Rehab Centre Society (DIC), the property owner, submitted a legal brief in which counsel detailed the appellant's position. Her brief, contained on pages 892 to 996 of the Board report, described the following points: I. Affected person status, Application background; and Bylaw and policy background; II. (A) Plans and policies affecting the parcel; (B) District purpose statement; (C) Appropriateness of location and parcel; (D) Compatibility and Impact on adjacent development and neighbourhood; (E) Merits; (F) Servicing requirements; (G) Access and transportation requirements; (H) Vehicle and pedestrian circulation within the parcel; (I) Impact on public transit system; (J) Sound planning principles; and III. Irrelevant matters (A) Popularity; (B) User; and (C) Conduct; and IV. Remedy.

At the hearing Ms. Elgart referred to her brief and she elaborated on the points addressed in the brief. She described the application and proposed development. She referred to section 35 of Land Use Bylaw 1P2007, the MDP and "The Planning Principles for the Location of Care Facilities and Shelters (2011)". She pointed out that the MDP indicates that care facilities should be located within residential and mixed-use communities, and that the Care Facilities Principles document indicates that they should be located within residential areas. The development meets the guidelines for the C-COR2 District that applies to the parcel. It allows residential uses and a number of commercial and other uses such as office. She stated that the proposed development is compatible with the residential uses to the west and the commercial or industrial area to the east. The subject property is relatively isolated from the residential community to the west. The site will become more integrated with the community because it is redeveloping into a residential use. She mentioned that, under the Land Use Bylaw, hotel use is part of the residential uses. The neighbourhood population will be slightly increased as a result of the development.

Mr. Clark of Systemic Architecture Inc., the applicant, explained the design of the development in order to demonstrate how, in their opinion, the planning policies and the Land Use Bylaw requirements are respected. He discussed the project parameters, the existing site and building deficiencies, a comparative visual analysis of the existing and proposed site conditions, Bylaw uses, unit mix, the building design, and CPTED. The area of the parcel is 15,509 square metres or 3.83 acres, which is the entire legal property designated by the street address 4804 Edmonton Trail NE. The scope area captures the portion of the parcel that contains the seven storey building and the parking as per the Bylaw requirements. The remainder of the parcel is not proposed for modification, with the limited exception of where surface improvements are proposed, such as realigning drive aisles outside of the scope area. He mentioned that the scope area is 8,917 square metres or 2.20 acres. The 118 parking stalls required for the dwelling units and retail and consumer services are included within the proposed development/project.

He mentioned that the basic structural components of the building are sound and there are no inherent issues with the building structure that will prevent its reuse. He described where the existing site plan does not conform to the Land Use Bylaw. Loading and waste and recycling facilities do not conform to current City standards. Truck turning radii into the stalls also does not conform. The existing facilities and enclosure on the site are not screened. He advised that these facilities are also used by the tenants of the commercial uses of the neighbouring property to the north, McKnight Plaza, which is owned by 598558 Alberta Ltd.

Mr. Clark stated that, within the proposed development, improvements are proposed to the site and landscaping in order to deal with the non-conformities of the Bylaw. Proper pedestrian crosswalks have been added within the site and sidewalks have been extended. The existing right-in/right-out Edmonton Trail access has been retained in its current location as well as the vehicular connection to McKnight Plaza to the north. The landscaping plan proposes a variety of improvements and alignments to current bylaw standards. The 5.0 metre setback area requirement along the east property line is returned to its natural state with soft landscaping. As a result, the asphalt coverage of the parcel is reduced to 55.9 per cent and the landscaped coverage is increased to 20.9 per cent. This is a major improvement to the site and acts as buffer to the Nose Creek embankment. A new fence along the east property line is proposed. The tree count will be increased from 16 trees to 83 trees. On the west side of the parcel, landscaping will be increased within the scope boundary area. He highlighted the proposed improvements through a slide show.

Mr. Clark then discussed the proposed floor plan configurations, retail services and the proposed suite designations. There is a diverse mix of suites. All units will, whether assisted living or dwelling units, have a full size refrigerator, dishwasher, sink, and cook top in the kitchens. He discussed the CPTED review and explained that modifications were made to the plans as a result of its recommendations. Should the application be approved, further refinements will be done in terms of security camera coverage.

Ms. Elgart continued her presentation to deal with the access and transportation requirements as mentioned in section 35 of the Land Use Bylaw. She described the vehicle and pedestrian circulation on the subject parcel and the connection with the McKnight Plaza parcel. In terms of the impact of the public transportation system, counsel advised that with the assisted living uses and the relatively low rental costs, it is anticipated that the users of the proposed development will be relatively high users of the public transportation network. In terms of purchasing the property, one key issue for the DIC was proximity to a primary transit system. She also pointed out that the projected north LRT line on Centre Street is not far away from the site and is certainly within walking distance.

Next she discussed sound planning considerations. She submitted that the proposed development complies with the rules of the Land Use Bylaw and City policies. The development contributes to many planning objectives including providing varied forms of housing and it supports the City's overall objectives of ending homelessness.

Counsel further submitted that there are a number of submissions of the opponents that reference the need and desire to have the building brought up to current building code standards. In this regard she advised that this is outside of the Board's jurisdiction. With respect to the issue of provincial funding, raised by some of the opponents, Ms. Elgart stated that the issue of financing is not before the Board. Furthermore, she submitted that, in her opinion, the issue of the development of the remainder of the parcel is not before the Board. There is a concept plan that arose out of the community charette process and the outcome of that is now called Greenview Commons. She stated that the potential plans of that process are not before the Board as the Board does not deal with potential concept plans. The concept plan deals with a greater area and includes McKnight Plaza and the property to the south. She also pointed out that the existing building was constructed under municipal approvals and complies with the Land Use Bylaw.

Regarding the argument that the DIC's proposed development would not have the support of the Calgary Homeless Foundation, she stated that the support of other social agencies is not determinative of whether or not a development permit should be issued for the proposed development. In terms of the City's ten-year plan to end homelessness, that is a social issue and is not before the Board. Furthermore, she submitted that the DIC is a firm supporter of the ten-year plan.

A significant amount of the materials received by the Board regarding the opposition to the development do not pertain to planning factors or planning principles. Ms. Elgart pointed out that there seems to be some incomplete information regarding the understanding of the project, including the comments that the project is for an emergency shelter. Many comments in the materials on the record relate to the project being an emergency shelter and that the proposal would include 120 assisted living units that lack kitchens. She mentioned that is not the scope of the development. She pointed out that there are also letters in support of the project. In 2014/2015 they initially received 4,603 letters (as a form letter) in opposition but that was for the 120 unit development without kitchens. Counsel also referred to the letter of the owner of Barbeques Galore and Woods Fireplaces in the Greenview Industrial area located 700 metres to the south. The owner is in support of the proposed development and stated that the development would be an improvement over the previous hotel use. There are other letters in support from individual residents in the community as well.

She submitted that the Board is aware that municipalities do not have jurisdiction to regulate the users of a development. A primary ground for the opposition to the project in this case is regarding the identity of the owner. Many of the concerns relate to the personal characterization of the people who are moving into the building. Counsel pointed out that this is not a planning matter. She stated that, regarding some uses like liquor stores, payday loan shops and pawnshops, Council has set minimum separation distances. None of that applies in this case. There are no setback requirements between residences and creeks; there are no setback requirements between residences and money marts; and there are no setback requirements between residences and liquor stores. She referenced decisions of the Board where the Board dealt with social issues and planning issues. The Board ruled that there was no evidence a proposed liquor store would contribute to increased crime in the area or to

open consumption of alcohol in the community. There is one particular case where the Board stated that there is no evidence that the proposed liquor store was detrimental to an affordable housing project. She pointed out there was also a case where the Board stated that affordable housing arguments are philosophical and socio-economic in nature and are not directly related to planning considerations.

Counsel stated that many of the comments suggest that the proposed development is going to bring crime and social disorder. On the social side the City of Calgary has social planning programs that address poverty issues. Crime issues are dealt with by law enforcement. CPTED design deals with the planning aspect to prevent crime through good design of buildings.

Regarding the request for an operational plan, counsel stated that an operational plan is not part of a development plan. How the residents will be living on the property, whether they will be allowed to have overnight visitors, and whether they will be allowed to drink are operational aspects that are not regulated by a development permit. The planner on the file, Mr. Melanson pointed this out. Ms. Elgart stated that much of the material before the Board deals with the fallout and negative impressions of the owner and potential residents because of the 2013 flood. In June 2013 there was a major flood in the city and a significant part of downtown was inundated. The downtown shelters and the Drop-In Centre in the downtown were all evacuated and the persons staying there were evacuated to the subject property. At the time there was some social disorder resulting from people who stayed on the property and were not ready for housing. Those people were in the neighbourhood and that created a decidedly negative impression in the neighbourhood. This is a conduct issue but in her opinion that is not a planning issue. These were unfortunate circumstances resulting from the 2013 flood situation.

Counsel advised that the DIC and the applicant take exception to the comment from one member of the Calgary Planning Commission that this was the worst consultation process that he has ever been seen. The Board has previously and consistently held that past conduct or errors made by a property owner when developing their lands is not generally a planning consideration. She stated that The City of Calgary's (Development Authority) submission does clarify that it is an open question of law as to what extent conduct can be considered on a discretionary use application. Ms. Elgart advised that there is no evidence or even an allegation that her client has breached any laws.

She pointed out that many letters state that the owners should have to sign a good neighbour agreement before the development permit is issued. Ms. Elgart stated that the Board is aware that is outside of the context of a development permit application. The owner has submitted a draft of such an agreement with the application. Counsel advised that the Thorncliffe/Greenview Community Association stated two years ago that that it was unlikely to ever sign a good neighbour agreement with the DIC.

In terms of the private agreements associated with the adjacent properties, counsel advised that all of these agreements have been looked at by her client and they are not aware of any impingement on any of them. There is an Access and Parking Agreement

in place regarding McKnight Plaza. She pointed out that the drafted development permit conditions 2, 19 and 20, contained on page 55 of the Board report, address this and stated that the existing agreement continues and will continue in place. She referred to an email of the file manager, Mr. Melanson, contained on page 245 of the Board report.

In terms of the utility agreement, counsel stated that there is a request to delineate the utility right-of-way on the plans. She advised that the utility agreement that is in place is a non-specific utility agreement. It does not specifically set out where the utility lines should go. The utility line in this case is a sewer line. In the appellant's view the proposed landscaping does not impact the utility agreements and these agreements are not before the Board. Furthermore, counsel advised that any private agreements are private matters of contract. Parties have the ability to renegotiate any agreements.

Counsel, in summary, submitted that the proposed development is compliant with the Land Use Bylaw, supports the City's plans and policies, is compatible with and is expected to have generally positive impacts on adjacent developments and the neighbourhoods. The development supports the City's objective of expanding housing stock, particularly rental housing, and expands the stock of affordable housing and care facilities. In her opinion, the project satisfies the concerns of the community, City Administration, Calgary Police Service, and other stakeholders including the Province.

Upon questioning from the Board, the appellant explained the operations of the proposed development. Ms. Newman, the Executive Director of the DIC elaborated on the operational aspects of the development. The primary concern of the DIC regarding the proposed project is providing housing for those who are in need of housing. They also revised the application to include two-bedroom units so they can accommodate families and children. She explained there is an extensive screening process for the prospective tenants of the building. They look at the individuals, their history, compliance issues, and how they can create a plan to ensure that the person is successful in housing and does not return to the shelter.

Ms. Newman pointed out that the building will have communal space that will provide the tenants with individual access to the internet, business training, classes that teach people employment skills, and counselling services. There will be office space for counselling and support staff. They have nurses from the downtown Drop-In Centre who will come to the building to address any medical issues. They also have support services for other agencies in the Calgary area. They have doctors that are with CUPS (Calgary Urban Project Society) who will frequent their buildings when individuals are in need of medical services. There also will be security staff on site 24 hours a day. They intend to use a biometric system to check people going into the building and to monitor the guests who come through the building. The support staff is trained. Regarding tenure of rental, she advised that the subject building is meant to be for long-term supported housing so that people stay in the building for many years. The intent is that the people will not return to the shelter and receive sufficient support so they become successful and, over time, may move into a different type of rental facility. There is no time limit for the renters who will stay in the building.

Upon questions from the Board, Ms Elgart and Mr. Clark explained the differences between the assisted living units and the dwelling units in terms of layout of the units and support services. Mr. Clark advised that the building would be like any apartment building that one might think of in this neighbourhood. It would be a standard residence. He advised that the communal kitchen in the building is only for the 37 assisted living units on the site. He referred to the use definition of assisted living unit in the Land Use Bylaw.

Ms. Newman mentioned that all individuals they would be considering for tenancy are people they consider housing-ready. They have been screened, they are working, and they have other sources of income. Ms. Newman reiterated that all individuals who are eligible for tenancy are screened and would have to meet specific criteria. All tenants are put through a police check by the Calgary Police Service. They want to ensure that the people they put in the neighbourhood have not been charged with any severe criminal offences. They operate two other apartment buildings in the city and safety is a major consideration for their neighbours. Sometimes they get referrals from other agencies. The people meet the criteria for housing based on planning principles that have been created by the Calgary Homeless Foundation. Ms. Newman stated the DIC is an accredited agency for housing and they have to adhere to strict guidelines. They fall under the residential tenancy agreement that all of their tenants will need to sign.

At the hearing the appellant's team subsequently submitted plans with potential modifications/revisions to the plans for the Board's consideration. In addition, the appellant submitted a list of potential conditions the appellant is willing to accept as part of conditions of a development permit if the Board would consider approving the development and issue a permit. Further, the appellant submitted a draft operational plan.

Some of the proposed modifications are: (1) Invert the southwest corner of the west plaza to create an inner courtyard for an activity/ gathering space (3D image on Side 9 of the plans submitted, dated April 12, 2016); (2) Add seating under the existing canopy on the west façade of the building (Slide 10); (3) Program portion of the space east of the building for activities (and for a potential daycare) (Slide 11); (4) Consequential adjustment/relocation of the number of trees; and (5) Adding amenity space on the ground floor of the building (as per Slide 13), resulting in relaxations of (a) the 20 per cent requirement of the gross floor area of the building pursuant to section 804(1) of the Land Use Bylaw; and (b) prohibition of amenity space accessible to assisted living suites on the ground floor of a building per section 804(3).

The appellant stated that they would consider changing the number of units to assisted living suites if the Board would deem that appropriate or necessary. However, the appellant does prefer the current mix of uses as proposed in the subject application.

The appellant also stated that they would accept the City Administration's proposed changes to the permit conditions if the application were to be approved by the Board. Additionally, the appellant would be willing to accept a resident cap to a maximum of 115 total residents and 55 residents for the assisted living units, if legally this would be

possible (which is unclear). However, the DIC's intent is not to have this number of residents.

If deemed necessary, the appellant would be willing to accept changes to the interior plans regarding the amenity space. In addition, the appellant stated they would be willing to accept a condition that the amenity space be available to all building residents.

In terms of loading, the appellant is willing to accept a condition that states that the owner shall make the loading area shown on the plans available to 4820 Edmonton Trail NE (McKnight Plaza) on commercially reasonable terms. The same would apply to the waste and recycling facilities. Furthermore, they would consider a condition mandating a community liaison committee and conditions pertaining to the activities of that committee.

The appellant submitted a draft operational plan in terms of how the building and facility would be operated. It outlined the following points: the purpose of the plan; the purposes of the building and property; the maintenance of grounds and facilities; renovation facilities; facility operations/ staffing; waste and recycling; rental mix; tenure; tenant profile; parameters for tenants receiving supports/ services; Calgary Homeless Foundation policies and best practices; Safety Codes Council standards; and communication, records, and operational plan updates.

The appellant would be willing to accept a condition requiring security staff on site at all times, as well as other stipulations the Board may deem necessary.

Mr. Clark stated that all dwelling units will have fully functioning kitchens. All units will have an in-counter cooking surface, not hot plates.

Regarding the waste facilities, Mr. Clark stated that they will consist of waste bins with 6 cubic yards of capacity. They are doubling the capacity for recycling. He referenced the new city policies for recycling. The collection frequency of the waste shall be tuned to the demand. They are using private contractors to pick up the waste.

Regarding the previously existing parking stalls to the north of the building, he advised that these stalls were non-complaint to the Land Use Bylaw in terms of dimensions. He mentioned that the previous use of the restaurant in the building was a more intense use than the retail use proposed in the development. The logic of the 1989 development permit is still applicable and the proposed residential uses of the project will generate off-setting peaks from the commercial tenants both on the subject site and McKnight Plaza. Mr. Clark submitted that the proposed development is respectful of the intent of the shared surface parking agreement and does not negatively impact McKnight Plaza or its parking. The appellant's counsel pointed out that, under the conditions of the caveat, the shared parking may not be modified or extinguished without prior agreement between the adjoining property owners.

Mr. Clark stated that the site has a surplus of 51 parking stalls.

The appellant stated that the existing access and parking agreement allows for overflow of parking between the subject site and the adjacent northerly site. They submitted that although the agreement is poorly worded it has functioned over the past 25 years.

Mr. Clark also stated that the exterior of the building will be renovated. The building will be painted bringing it up to a tidy appearance. Further, he advised that a robust security system will be installed. He advised that they have to adhere to the Building Code. This is regulated by the required building permit, not a development permit.

Respecting the CPTED report, Mr. Clark advised that there is no second CPTED report on record for this project. He did meet with the author (Police Officer) of the CPTED report at Calgary Police Service headquarters to review the plans that are before the Board and he advised that the changes they had made to the plans had addressed their concerns.

With respect to the viability of the retail space, which was questioned by the opponents, Mr. Clark stated that the retail space is no impediment to the affordable housing in the building. He referenced examples of mixed use buildings in the Beltline that have affordable housing units.

Regarding the argument of the opponents that the DIC has no experience with the leasing of commercial or retail space, Mr. Facey of the DIC stated that he manages the retail spaces in all their buildings and that he has no vacancies.

Regarding people transitioning out of the shelter, Mr. Facey stated that the fourth and fifth floors of the downtown shelter are supported living floors and these residents have a case worker assigned to discuss housing options. Therefore, they have a good understanding of who these people are.

Respecting the future tenants and residents of the building, Mr. Facey advised that they have an exhaustive application process that involves a criminal record check, a credit history check, income check, determining any addictions, behavioral issues, etc., of the future residents. The tenants must have income to support the rent. He also advised that the turnover rate in their building is less than one percent. They work to ensure that they match the right tenant with the right facility. The residents of the assisted living units must abide by the supportive living agreement which is much more restrictive than a residential tenant agreement. Provincial guidelines provide how many people can stay in a unit. In this case that would result in a total of 110 people.

Furthermore, Mr. Facey advised that the DIC has a fleet of 15 vehicles that could transport residents to appropriate LRT stations or bus stops.

In rebuttal, Mr. Keyes, counsel for the appellant/applicant, reiterated that the existing Parking and Access agreement will ensure free flowing parking between the subject site and the adjacent sites. Any reserved or assigned parking would affect that. Mr. Keyes stated that, in his opinion, any changes to the agreements should be through negotiations between the adjoining landowners rather than through a request from the Board to impose conditions that would interfere with the existing legal arrangements.

Affected Persons' Submissions in favour of the Appeal

Jonathan Fesik, the president of the Condominium Corporation at 624 Beaver Dam Road NE attended the hearing and spoke in favour of the appeal. He stated that their condo building is located four blocks to the north and that he supports the proposed development. In his opinion, there is a terrific need for the proposed development. He mentioned that he and 30 business owners in the area, who he represents, are in favour of the project. They are in agreement with helping those persons who are less fortunate.

*Affected Persons' Submissions against the Appeal*Submission of Ms. Belyea

Myrna Belyea, representing the adjacent neighbour and owner to the north of the subject parcel, 598558 Alberta Ltd. (also referred to as McKnight Plaza), spoke in opposition to the appeal. A summary of the issues she intended to raise at the hearing were submitted on March 8, 2016. At the hearing Ms. Belyea referred to this submission, contained on pages 997 to 1063 of the Board report as well as additional submissions presented during the course of the hearing. She advised about some errors in her written submission contained in the Board report and corrected this for the record.

In summary, Ms. Belyea raised the following points. She submitted that this matter is not about affordable housing or about fellow citizens who are moving from homelessness to permanent housing, as her client, for many years, worked with the city's vulnerable population. The project and application is about good comprehensive site planning and open, positive and honest communication between neighbours. She mentioned that it is also about changes of use - one permitted and two discretionary with major changes to the site plan, all of which have significant implications to the site itself as well as adjacent land uses and the community as a whole. It is not a simple change of use, but a total repurposing, or redevelopment, of the site. Ms. Belyea explained that her client had sent several letters to the Administration, not opposing the residential uses, but instead asking questions about the operational and functional aspects of the proposed development. Her client was advised by the Administration that they could not request an operation statement, but in her experience, she knows of examples where the Administration can impose permanent conditions that require land owners to report annually on the details of functions of a proposed use for the length of the project.

Ms. Belyea then reviewed a number of overarching documents including the *Municipal Government Act*, the City of Calgary's Municipal Development Plan (MDP), the Land Use Bylaw, and the specific sections that pertain to the redevelopment of sites.

Referring to Exhibit M of her presentation, she cited portions of the Objectives, section 2.4.2 of the MDP, which refer to redevelopment of large sites greater than 1.0 hectare in size in Developed Areas, requiring comprehensive plans, and that it seems that the

concept of having comprehensive plans for parcels greater than one hectare is an important policy of the MDP.

Ms. Belyea explained that the subject site is 1.55 hectare and with the two adjacent sites it is 2.16 ha. Due to the age of the current development, considering the total repurposing of the subject site and the logical lifespan of the proposed uses, if a comprehensive plan is not required now, the sites will remain under-utilized for many years to come, or another non-comprehensive proposed development will surface for the beer store/car rental portion of the site. It is not a good approach to planning and not in the spirit or clear direction of the MDP.

She also referred to section 35 of the Land Use Bylaw and to the Purpose Statement of C-COR2, in particular regarding the Floor Area Ratio (FAR) for the land use district being 3.0. She explained that the "scope area" of the subject site has a FAR of 0.72 and it drops to an FAR of 0.45 for the entire parcel, and as such, the site is very underutilized as per the MDP, which can only be addressed appropriately through a comprehensive redevelopment that is sensitive to the adjacent uses and the communities surrounding it.

She stated that the MDP is all about intensification - this site is an excellent opportunity to respond to the MDP and to redevelop the site and create more density on the parcel. In her opinion this application before the Board does not do that.

Ms. Belyea then referred to the appropriateness of the uses for the location and the Guide to Special Care Facilities. In her opinion, the subject site is isolated from connectedness, which is an important aspect for any use that wishes to assist its occupants to become an integral part of the community. In her view, the reference to the proposed development being its own community misses the point of integration within the community, the community in this case being Greenview.

Next, she explained that the subject site, her client's parcel to the north and the Benner site to the south, at one time, were one parcel and later subdivided. The subject site and the adjacent site to the north (which Ms. Belyea represents) were part of a comprehensive redevelopment under permit application DP1989-3215 which allowed for the development of the adjacent site and some redevelopment of the subject site. There were considerations and accommodations for each parcel and for both parcels such as: shared access; shared parking; overland drainage; location for waste and recycling facilities; fence construction; planting of trees; sanitary sewer line; parking lot configuration; off-site road upgrades; pylon sign access; and the ATCO gas line.

Ms. Belyea explained how the proposed development of the subject site would impact each of those items and submitted that the significant site changes are anticipated to have a major negative impact on the commercial development to the north, McKnight Plaza, due to a number of factors, including: reduced parking within the development site; reduction in one access drive lane; and reduced size and relocation of waste and recycle facilities.

She also stated that this application has a significant and negative impact on the interconnectedness of the two sites.

Regarding parking, Ms. Belyea outlined the following points:

- (a) The approved and existing development permit for the redevelopment of the comprehensive site dates back to 1989 -- and it was a comprehensive redevelopment then -- and has 114 stalls between the south side of the hotel and the north property line. The north side of the hotel has no public access points. The hotel was oriented to the west and the south of the building, thus providing the parking stalls to the north side mostly for the development to the north, which has worked well for the past 25 years. The subject application shows only 76 parking stalls within the same area and there is now, on the north side of the building, access to retail premises of 5,000 square feet;
- (b) According to the Land Use Bylaw the retail uses require between 18 and 19 parking stalls. On the north side of the hotel, Ms. Belyea believes there are approximately 22 proposed parking stalls. This will significantly limit stalls available to the uses on the adjacent site that face the hotel;
- (c) This is of considerable concern to her client. When the redevelopment of both sites occurred in 1989 under development permit DP89-3215, it was clear that the parking deficiency for the entire site before the subdivision was only eight stalls, which is less than a 2 percent relaxation. Upon subdivision, the adjacent site, at that time, was appearing to have a 60 percent relaxation, thus the reason for the shared parking agreement. Unfortunately, it is a poorly-written agreement and the communication with the Drop-In Centre and their consultants on this matter has become troubling. Currently, based on the latest development permit approval for the adjacent site, it is short about 31 parking stalls or a 50 percent required relaxation;
- (d) This subject application compounds their parking concerns by removing 38 parking stalls within the northerly area of the parcel. With the two prior owners of the subject site this was never a concern, as in both instances there was a cooperative attitude, and issues were always worked out;
- (e) With the hotel not having any public access on the north side of the building, shared parking on that side was not an issue. The parties at that time agreed that shared staff parking would be relocated within the site to the south and east of the beer store. Ms. Belyea's client has no comfort that this neighbourly accommodation will continue;
- (f) She explained that a review of the development permits and bylaw checks over the past 25 years for both sites always show a significant parking deficiency of her client's site, thus acknowledging the original development permit and the subdivision, but never has there been any indication by the City Administration that the required shortfall is accommodated on the subject site;

- (g) Ms. Belyea explained that when she and her client brought the shared parking and access agreement to the attention of the City Administration, they said they did not know it was there and they would facilitate a meeting between with the applicant and her client. They agreed, and later reminded Administration of their offer, but that meeting never took place; and
- (h) She stated that she and her client did not know at that time that retail was being proposed for the entire main floor of which 5,000 square feet would have its access to the north side of the building.

Upon questioning by the Board, Ms. Belyea clarified that there is a 32-stall deficiency for the adjacent north site, McKnight Plaza, which is made up through the parking easement that was to be covered by the shared parking agreement. She acknowledged that, based on the calculations with the reduced parking requirement for the proposed uses, the requirement is much less than the hotel site was, so there is surplus. However, she reiterated her client's concern that with the subject redevelopment of the site, they have taken 38 stalls away from the northern portion, which is the closest portion to McKnight Plaza.

Ms. Belyea further explained that with 38 parking stalls on the northern part of the subject site being taken away, and if there is the potential for the south to be subdivided off, the parking agreement needs to stay in place. She explained that they could be looking at that site to be quite densely developed leaving no parking available for anything else. So it becomes a concern if one is looking at this in a piecemeal fashion.

She explained that there are 31 or 32 parking stalls currently on her client's site, which is about 50 per cent of the required number; the rest has to be absorbed by the hotel site. Ms. Belyea stated she believes her client can live with the 31 stalls if the parking shortfall of her client's development (32 stalls) is accommodated on the subject site.

Respecting site access, Ms. Belyea addressed the following points:

- (1) Currently there are two drive lanes from an all-turns access, and the all-turns access is at the south end of the larger site. The subject application proposes to take away the drive lane immediately to the west of the hotel building leaving the only drive lane for customers wanting to leave the site and turn south onto Edmonton Trail the most north/westerly one. If for any reason, there is a blockage of the one drive lane, customers will be unable to leave that site and head south. Good site circulation is compromised by this change;
- (2) Vehicles from the adjacent site, McKnight Plaza, currently enter and exit at three locations: a right-in/right-out onto McKnight Boulevard, which in future will be removed per the City's special development agreement when they widen McKnight; the second one is a right-in/right-out at the north end of the subject site, and then at the southern end of the subject site, is an all-turns access. The one at the very bottom (south) end is a right-in/right-out into the Benner site and Ms. Belyea's client doesn't have legal rights to that;

- (3) For the owner and applicant of the subject site to ignore the interconnectedness of the sites and repeatedly represent in various ways that it does not need the shared access and parking agreement, and that they would like it gone, would be a disaster for the adjacent property to the north;
- (4) If the McKnight Plaza customers and tenants are not allowed to access their site through the subject site, the only access would be the right-in/right-out off of McKnight Boulevard. Exiting to get back into the Greenview Community would be difficult. Ms. Belyea showed a map of the circuitous route, should they be restricted to the right-in/right-out only at McKnight Boulevard. They would have to either drive to Deerfoot, south on 32nd, back to Edmonton Trail and back into their community or go east of 12th Street, find somewhere to make a U-turn, and return; and
- (5) Ms. Belyea also explained that when McKnight Boulevard is widened her client would have no access to his property.

Regarding parking and access agreements, Ms. Belyea outlined the following:

- (i) Since this application significantly changes the site plan with respect to the number of parking stalls, driving lanes, and location and size of waste and recycling facilities, it was incumbent on the City Administration to make sure these items, as part of the major redevelopment, were properly addressed at this time. They did not do so;
- (ii) In February 2015, in the initial discussion with the DIC's lawyer, there was a commitment to correct the oversight and improve on the documentation. They had a discussion. It was agreed the existing agreement were not adequate, and he said he would draft some documents. That draft never came; and
- (iii) She explained that, based on several meetings and discussions between her, her client, and the applicant's representatives, it was promised that a new parking and access agreement would be developed, but no agreement ever materialized;

Upon questioning by the Board, Ms. Belyea explained that without a mutual access agreement, nothing would stop the owners of the subject site from placing a fence or barrier along the north side of the subject site, and by doing so her client would have no access to the entrance/exit driveways and multi-turn accesses onto Edmonton Trail. There would be no ability to access her client's site from Edmonton Trail; it would be precluded based on the proximity of that site to the corner at McKnight Boulevard.

Ms. Belyea reiterated that there is a 32-stall deficiency for the adjacent north site that is made up through the parking easement, which was to be covered by the shared parking agreement.

She acknowledged that, based on the calculations with the reduced parking requirement for the proposed uses, the requirement is much less than that for the hotel site, so there is surplus. She reiterated her client's concern that, with the subject

redevelopment of the site, they have taken 38 stalls away from the northern portion, which is the closest portion of the site to McKnight Plaza.

With respect to the size and relocation of waste and recycling facilities, Ms. Belyea submitted the following points:

- (a) Currently the adjacent site, McKnight Plaza, has, as per the 1989 development permit, its waste and recycling facility on the subject site. The combined waste and recycling facility for the proposed development is being located at the northwest corner of the subject site. This results in a loss of three parking stalls near the adjacent businesses and a significant reduction in the size of waste and recycling facilities;
- (b) Ms. Belyea stated that she and her client are not familiar with residential capacity uses, and do not know the site requirements, but they expressed concern, based on what they know about the McKnight Plaza requirements. There's no comment by the City about the facilities being shared with the adjacent site, though Mr. Clark did, however, make a note on the plan to that effect. Ms. Belyea is not sure what legal protection, if any, that provides. It was all they could do to recognize the 1989 approvals;
- (c) Currently McKnight Plaza has garbage pickup three times a week. Based on the proposed capacity, this could be every day and maybe even twice a day which has a significant operating cost; and
- (d) The end result of the final design for the waste and recycling is that there will be three 3-yard bins, when, in the past, there were two 6-yard bins for McKnight Plaza alone, picking up three times a week. The hotel had two much larger bins and one possible 6-yard bin. From her client's perspective, and, it would seem, City Administration's, what has been proposed is not sufficient.

Upon questioning by the Board, Ms. Belyea clarified that the garbage area is currently not shared. Currently the existing waste and recycling facility is solely for the use of the adjacent property but it is located on the subject property's site. It's one of those anomalies that came out of the subdivision that wasn't properly covered. It was built for and is only used by McKnight Plaza and currently there is no agreement in place.

She pointed out that the hotel never used the waste and recycling facility that is currently in place, as the hotel had its own facility. The McKnight Plaza tenants and the hotel shared the grease disposal bin. Ms. Belyea explained that the current 6 yards of garbage capacity, of which her client is the sole user, is dumped 3 times per week. The subject development is proposing a waste and recycling facility with a capacity of 3 yards for the entire development (18,000 square feet of retail and 79 units of residential). Because her client would also need access to that waste and recycling facility, it would need to be dumped much more frequently, which would be a significant operational cost to her client. In her view, the capacity of the proposed waste and recycling facility is not adequate.

Regarding security pertaining to the proposed waste and recycling area, Ms. Belyea outlined the following points:

- (1) The walls of the proposed waste and recycling facility are significantly high, so people can't throw garbage over the top, but it also provides a spot for people to linger if they should desire. Also, the waste and recycling area has a man door that one has to go inside in order to dump garbage, and therefore you are removed from public view for a while. As she understands it, each one of the unit owners in those 75 dwelling units and assisted living units would be accessing the waste and recycling facility personally themselves; and
- (2) Ms. Belyea's client, Mr. Willems, had advised the applicant he was willing to have two cameras point towards the access between his two buildings, which would be on his adjacent property. However, they can't do it without his permission. Ms. Belyea explained he was willing to give his permission but that was not addressed in the application in the end.

Respecting private utility easement protection, Ms. Belyea submitted that looking at the original subdivision approval, for when the northern parcel was subdivided off, she noticed one comment in the report that stated:

- *Adequate easement protection will be required for all utilities. No trees may be planted or structures built within these easements and access to same must be available at all times.*

Regarding the freestanding pylon sign, Ms. Belyea outlined the following:

- (a) She explained that her client, Mr. Willems, had offered to purchase the derelict pylon sign that is on their property but owned by the hotel site. There was no response to any suggestions or requests; and
- (b) Mr. Willems had also brought up the neglected signs, both the pylon sign and the sign at the entrance. His tenants were concerned about the image and also wondered if they could be on the pylon sign. Verbally there was some agreement with the applicant, but nothing was ever formalized. The pylon sign still looks derelict. As for the entrance sign, a plastic cover with a word on it was added somehow, but they're not sure how.

In rebuttal, Ms. Belyea pointed out that from her review of the previous development permits and bylaw checks done by the Development Authority during previous development applications pertaining to the adjoining sites, she concluded that the Development Officers did not take into account in every case the existing parking agreement on Title. In her opinion, when calculating parking it should be considered comprehensively including the McKnight Plaza site. It was approved as such in the past, and this should continue in her view.

Submission of Mr. Davis

Christopher S. Davis, counsel for Benner Plumbing & Heating Ltd. which owns the property to the immediate south of the parcel, submitted numerous materials and the following points in opposition to the appeal. He advised that his client wishes to support the concerns of the community and his neighbours. His clients have some specific concerns about the development. To ensure that the commercial bays in the subject site are commercially viable with typical commercial configuration, they would like to see a uniform sign band design included in the proposed development. In addition, they would like to see an attractive and functional amenity space within the site's primary building and/ or exterior landscaping in accordance with section 146(a)(vv) of Land Use Bylaw 1P2007 which mandates that "commercial social and recreation activities are provided within the building or outside".

Counsel submitted that should the appellant's appeal be successful, his client would like to see the following conditions of approval to be added: (A) A prior to release condition regarding: (1) landscaping to incorporate on-site amenity facilities for the residents, including but not limited to a children's play area, and outdoor grilling area, etc; (2) identify specific bench locations (both with the scope and non-scope area) within the proposed landscaped setback areas, in particular to the east setback; and (3) label the "Existing Site Plan DP-1.2" to confirm that the proposed curb remediation within the "non-scope" areas are part of the subject permit approval and are required improvements associated with the application and that the surface irregularities within the legal site be rehabilitated; and (B) The improvements shown on the approved landscape and planting plans be maintained or replaced. These conditions should be to the satisfaction of the Development Authority.

At the hearing Mr. Davis pointed out that this client's site was subdivided off from the subject development site. He advised that in the subject application there is a distinction made between the legal parcel and the scope area. He submitted that, in his opinion, the whole legal parcel is before the Board and that the Board certainly has the right to impose conditions that pertain to the entire site. This would be entirely appropriate and certainly allowable pursuant to the *Municipal Government Act*. His client is supportive of improving the interface along Nose Creek, creating a large setback, and improving the landscaped area in the southeast corner as is proposed in the application. He advised that his client is concerned about the amenity space along Nose Creek to the south of the subject site. It is public space. His client has a zero lot line with the subject site and there is a 3 metre wide utility right-of-way. His client has a lawful right-of-way in and out of the subject site which allows all-turns access to Edmonton Trail. They also have a right in/right-out only on the south end of their parcel and this agreement was registered by way of two easements on Title. He mentioned that there are also restrictive covenants in place.

He advised that his client and the tenants of the building are concerned about the viability of their retail business adjacent to the subject site and want to suggest some conditions that might assist in ensuring that the site is functional within its own parameters. Counsel advised that his client is concerned about the amenity spaces included in the development. They would like to see more detail on the plans about how

it is going to function to satisfy the requirements of the assisted living use definition of the Land Use Bylaw. They also would like to see some outdoor amenity space included for the residents. He referenced the CPTED review in this regard. They suggest adding some benches in the proposed amenity space along Nose Creek. Regarding the fencing, they would like to ensure that there is no obvious point of access and egress to the public area and Public Park adjacent to the site and their site. Further, Mr. Davis stated that his client is concerned about the viability of the proposed retail space in the building. They support the community concerns but are focused on the particular issues they have raised in their submissions.

Submission of Mr. Zannis

Nick Zannis, one of the owners of Golden Acre Garden Centre, made a submission. He stated that he is speaking on behalf of 18 businesses in the Skyline Industrial Park, located to the north. Their property is over 13 acres and the Garden Centre employs over 200 people. They are apprehensive of the proposed development due to the DIC's lack of engagement and complete disregard for the concerns of the neighbourhood and surrounding businesses. Mr. Zannis stated the poor communication has caused a lot of distrust and fear. The relationship was further fractured during the 2013 flood. He advised that, at that time, they were overwhelmed with loitering and break-ins at their Garden Centre. Their property was damaged and their staff was threatened. The DIC dismissed the concerns. From a planning perspective the Skyline businesses would have hoped to see a more comprehensive development on the site. The Skyline businesses believe the proposed development is not compatible with the area and would have a negative effect on the surrounding businesses. They have started unfortunate preparations for a possible relocation. He advised that a permanent Drop-In Centre would have irreparable effects on the business and residential community.

Upon questioning from the Board, Mr Zannis stated that he would like to see some more comprehensive commercial development on the site with, for example, a big retail anchor tenant.

Submissions of the Thorncliffe/Greenview Community Association

Marvin Quashnick, Alison Abbott, Brad Giddings, Gael Macleod and Tara Rindfliesch, represented the Thorncliffe/Greenview Community Association and made submissions in opposition to the appeal.

Mr. Quashnick started his presentation advising that they have a long history with the placement and integration of special care facilities in the community. This is demonstrated by the very long list of agencies that the community association has been supporting. He referenced the Special Care Facilities Guide and the Good Neighbour Agreement. He advised that they see the limitations of a good neighbour agreement and that one has to start with a basis of trust. The lack of trust was a concern and is the reason why the community association did not previously follow through with the Good Neighbour Agreement with the appellant. He submitted that the community association consulted with many in the social services sector, with the police service, with urban

planners to understand the proposed development and almost universally they have offered criticism. Unfortunately, most of them don't want to go public for a number of reasons. Some of it is just that they are afraid to do so. He referenced the Good Neighbour Agreement regarding the Fresh Start project; the community was able to work with that agency. They are not vicious or NIMBY in terms of opposition to agencies being located in their community. He referred to comments made by the CEO of the Calgary Homeless Foundation in December of 2014 about the subject project. He submitted that the Calgary Homeless Foundation still has not offered their endorsement for the latest plan or given its accreditation to receive provincial funding for the operation of the proposed development. He stated that the community association in general supports the potential use of assisted living on this site with the right mitigations and integration; however, the current applicant in three years has not been able to come up with a plan that is to the betterment of all.

He agrees with the submission of Ms. Belyea regarding the policies and the difficulty with the retail space on the main floor of the building. He explained the engagement process the community went through with the appellant over a three-and-a half to four-year period with multiple engagement sessions. The community association and community residents were involved with the charette process. He mentioned that many discussions were held with the public, the businesses, social sector services, urban planning, politicians, etc. He mentioned that this area of Greenview has the biggest level of poverty. It is also the area where the people are less engaged in their facility and the community as a whole. He advised it is an isolated site; it is isolated by a number of factors - physical, perceptual, and traffic wise.

Ms. Abbott, who lives at 327 Greenfield Road NE and is a director on the board of the Thorncliffe/Greenview Association, addressed the Board regarding the proposed development. She advised that the community could support affordable housing and assumed that the DIC would be a credible provider. However, concerns started to arise and she got involved with the group called Greenview Cares. She pointed out that Greenview is a 60-year-old inner-city community of about 2,100 people. The community has a good mix of single dwelling homeowners, renters, apartments, duplexes, et cetera. Currently, no apartment or townhouses are higher than five storeys and they have very strong history and demonstrated track record of supporting social agencies that have become very much integrated within the community. She mentioned that, as any older inner-city community, their population is aging and the community is looking for a revitalization of an influx of new residents including families. Future development needs to be balanced. She stated that the poverty rate of the community is higher than 26 per cent. A recent survey indicates that 35 percent of the residents in Greenview felt that the quality of life has worsened compared to 12 percent in the community of Thorncliffe.

She referred to section 35(c) of the Land Use Bylaw and the appropriateness of the location. In her opinion, the isolated nature of the site does not allow for integration of the development into the broader community which does not serve the proposed residents well. She stated that housing people in an isolated tower does not help integrate people. The location is actually not integrated physically with the community or even the light industrial by the very nature of how it is isolated. The bike path is

mentioned but the bike path is actually located across the creek. She also referenced section 35(d) of the Bylaw that deals with the compatibility of a development and some comments of the members of CPC in this regard. In their opinion, the development is not compatible.

Ms. Abbot submitted that there is some lack of clarity regarding the types of support potential clients would need and what specific supports would be offered by the DIC and the access services like counselling or medical support. In her opinion, the potential chronically hard-to-house residents of the building would require a significant level of support. She submitted that in terms of the building, the needs of the clients should really dictate the uses.

She mentioned that the community association has concerns regarding the nature of the mixed market units. Certain sections of the building will be cordoned off for use by certain clients. Residents of the assisted living units in the building will be screened and secured access will be provided, which, in her opinion, raises the question about whether that creates cohesive living spaces. They would like to see full kitchens in the units rather than just a microwave and a dishwasher. She pointed out that there is limited landscaping proposed and no significant green spaces are proposed. The building is surrounded by a large parking lot. Ms. Abbot advised that the DIC provided inconsistent and conflicting information to the community about the project. The DIC talked about daily meals being delivered from downtown, yet on March 22 said that all tenants would cook for themselves. There have been inconsistencies about the number of mixed units and the number of assisted living units. She mentioned that Mayor Nenshi referenced the lack of public engagement. Ms. Abbot stated that the site has the potential for a comprehensive development that could bring the community and the business together. The last four years have been very challenging for the community and it has created a lot of uncertainty about the project. In conclusion, she stated that the proposed development negatively affects the use and enjoyment of adjacent properties.

Brad Giddings, who lives at 5936 Thornton Road NW and has been on the Board of Directors of the Thorncliffe/Greenview Community Association for several years, also addressed the Board. He gave an overview of the community engagement process regarding the proposed development. He mentioned that there are already a relatively large number of assisted living facilities operating in the community directly opposite the proposed development. He reviewed the communications with the DIC from the time that the DIC purchased the property. He mentioned that in June 2013 the flood happened which affected the Drop-In Centre downtown and the residents were moved to the subject building. The community aided in the transition with volunteers, clothing, and blankets to help out. The DIC stated there would be adequate supervision. However, there was little or no apparent supervision of the DIC's clients outside the building and there was an apparent lack of any sort of operational plan for dealing with the clients. This had a significant effect on the community. For months, people were going through the garbage bins of residents, trying to steal materials, etc.

He mentioned that the Mayor's office requested a meeting with the community to discuss the DIC's proposed development and the offer was made for a City-funded charette process provided that both the community and DIC would participate. The DIC advised that, in the meantime, they would file a development permit application and submit a draft Good Neighbour Agreement. Mr. Giddings mentioned that in March 2014 a community meeting was held to discuss the DIC's proposal. The members voted that the community association should not sign the agreement but should pursue the charette process. They discovered partway through the meeting that a member of the DIC was recording the proceedings on an electronic device. He advised that this is the type of behaviour that continued to disintegrate the trust of the community in the DIC.

He stated that in July/August 2014, the community pursued a smaller-scale version of a charette for the site with environmental design students from the University of Calgary with the assistance of Harry Harker of CitySpaces. He discussed in detail the charette process. Concept plans were developed for the site. He advised that the most important design feature was identified as modernization and revitalization of the entire land parcel. The concepts involved a key factor, which would either involve removal of the hotel building or significant remodelling of the site. The hotel in its current state was seen as a barrier to development of the site and integration with new design ideas. Affordable housing for seniors was also mentioned as a most important feature.

Mr. Giddings showed the different concept plans to the Board. He stated that these concept plans, in their opinion, are relevant for the subject application before the Board as they would like to see development happening on the site as soon as possible as shown in the concept plans resulting from the charette process. He mentioned that considerable resources have been spent on this process. The DIC did not want to pursue this further. He stated that there seems to be a lack of an overall plan for the site development. Modernization of the building and the whole site is a prime concern. He advised that there is little or no support or trust from the surrounding communities, both residences and businesses for the proposed development. In addition, there is little support from The City of Calgary, the Provincial government, and other charitable organizations who are working to end homelessness in Alberta.

Gael MacLeod also addressed the Board on behalf of the community association. She referenced her background as a volunteer and former alderman for the area. She stated that regarding the issue of housing and homelessness she has been engaged with these issues for a couple of decades and she has been very supportive of the ten-year plan to end homelessness. She supports the need for permanent supportive housing and for harm reduction strategies. These models are cost-effective and meet the demand of clients. She mentioned that the need for permanent supportive housing is great and it is critical to the success of the plan to end homelessness. This is not about nimby-ism; it is about what is best for the clients and to engage the client in the community. She advised that she is not against the inclusion of housing in communities. She submitted that the proposed development started off as a project with 117 single-room occupancy. It was a replacement for the Cecil Hotel or what would be called a working-man's hotel. Understanding that permanent supportive housing is a major barrier and this is not an ideal location and the number of residents was not ideal, she

tried to find some alternative locations throughout the city. However, there was absolutely no willingness on the part of the Drop-In Centre to follow through on that. She mentioned that the flood was a major problem and that made it extremely difficult.

In Ms. MacLeod's opinion the concentration of poverty is an issue. She referenced the previously mentioned poverty levels in Greenview and the adjacent community of Highland Park which are a concern and are at the ceiling level of 26 per cent. She spoke about differentiating between a dwelling unit and an assisted living unit. She questioned what difference it would make having 79 assisted living units instead of a mix of assisted living units and dwelling units. She also sees Bylaw enforcement issues regarding these uses. They had asked that the Good Neighbour Agreement contain statements that the DIC would comply with the land use for the site. The agreement became very contentious. She stated that the differentiation between the occupants of the assisted living and the dwelling units is unclear to her. She questioned safety as an issue with women and families mixed with hard-to-house persons. The mix of market and client-based units is also an issue in her opinion. She advised that there is tremendous potential for redevelopment of the entire parcel and she does not see the applicant wanting to contribute to that.

Ms. Rindfliesch who is the founder of the Greenview Cares group, also made a submission to the Board. She resided in the community from 2006 to 2015 and is a consultant to the community association. She mentioned that all of the homes in the Greenview single-family area are zoned R-2. She described the community and stated that there are a lot of industrial uses located around the community. She mentioned her participation in the engagement process. In her opinion, the DIC has changed their plans many times because they have not listened to the community. The DIC is trying desperately to meet two major objectives and that is to find a way to run a facility as closely as they want to as a hotel for 117 chronically hard-to-house, homeless individuals. The DIC is trying to find a way to get approval for a plan with a development permit as opposed to seeking rezoning of the property. The Provincial Funding of five million is also an issue. The configuration and mix of the units in the proposed development changed many times. Now the DIC has indicated families may be potential residents too. Also, subdivision of the land was mentioned to the community if a developer would be willing to develop the rest of the land. She mentioned that the Greenview Cares group worked as a community liaison committee on this project.

She referenced a document they obtained through a FOIP request from the City of Calgary; it is a legal opinion of Tim Bardsley provided to the DIC about the need for rezoning. Ms. Rindfliesch also referred to the correspondence from 2012 of Judy Lupton of the City's Planning Department to the DIC. Ms. Lupton recommended to the DIC that they should make an application for rezoning of the property. She addressed the concentration of care facilities in the community. She referenced the "Planning Principles for the Location of Care Facilities and Shelters" of the City of Calgary. It states: "Where a care facility or shelter is proposed within 300 metres of an existing care facility or shelter, any cumulative impacts of the facilities on the character of the surrounding neighbourhood, community amenities and on public safety and policing services should be assessed when evaluating the application." The Fresh Start

Assisted Care Facility with 50 beds is 446 metres away from this proposed facility from property line to property line. Ms. Rindfliesch stated that regardless, there are other care facilities in their neighbourhood; there is concentration of them in the community. On a map she showed the following locations: the proposed site for the Drop-In Centre's proposed assisted living facility and the Fresh Start site which has 50 beds and is 446 metres away. Across the street from the Calgary Drop-In Centre at 4807 Edmonton Trail is a facility operated by the Oxford House Foundation. It is a three bed addiction recovery treatment centre that is 34 metres away from the proposed development. At 315 48 Avenue NW, Oxford House also operates and owns a three-bedroom home which is located 236 metres away from the Drop-In Centre's proposed development. Therefore, there are a number of care facilities within 300 metres.

She stated that in addition to these facilities, there are other care facilities and a variety of social housing in and around their neighbourhood. There is the Wing Kei seniors' assisted living facility 1.1 kilometres from the proposed development. Wing Kei has another seniors' assisted living facility on Edmonton Trail and 32 Avenue with about 60 beds. At 1.5 kilometres is the Sunrise Native Addiction Centre which also operates 36 beds for addiction recovery. The SHARP Foundation, an assisted care facility with three beds, is located on 315 McKnight Boulevard, which is 924 metres from the proposed development. Further, Ms. Rindfliesch mentioned that the Calgary Homeless Foundation operates with Keys to Recovery, another addiction treatment organization with 33 beds, on Travois Place in the Thorncliffe Community.

Ms. Rindfliesch advised that there are also numerous Calgary Housing units located in the community. She quoted a statement of Councillor Carra from 2012 regarding the community of Dover; he stated that "[...] concentrating huge amounts of social housing is not good for the people who live there and not good for the area".

Mr. Quashnick also read a letter from Ms. Natalie Robinson who could not attend the hearing.

In rebuttal, Mr. Quashnick stated that he does not think that assisted living is problematic and that it is actually a good re-use of the building. However, he questioned what the model is for the building. In his view, the project as proposed in terms of mixed market use is not a viable model. In his opinion, low income seniors would be a good re-use of the building. They struggle with what affordable housing means in this case. In their opinion, the appellant is trying to fit a square peg into a round hole. Further, he stated that the DIC's draft Good Neighbour Agreement is too vague.

Submissions of the Highland Park Community Association

Elise Bieche, representing the Highland Park Community Association spoke against the appeal. She stated that the development permit application was circulated to the Highland Park community, but they were not engaged by the DIC in advance of the application. Ms. Bieche detailed the efforts taken by herself and her fellow community members to understand the development, the MDP, best practices for social housing, and other planning documents and policies. She also explained some of the revisions to

the application over the course of the application process, questioning the threshold to submit a new application. Regarding the application before the Board, Ms. Bieche expressed concern about the operating plan for the proposed facility, questioning who would rent at or near market units and how residents and guests would be screened for entry to the building. Ms. Bieche stated that the site is not being developed to its full potential, which in her opinion is contrary to the MDP which calls for comprehensive plans for sites larger than 1 hectare and partnerships between various levels of government and non-governmental agencies in the development of affordable housing. She stated that the DIC has not effectively engaged provincial support or other public or private partners. Ms. Bieche stated that the communities surrounding the subject site are on the tipping point of poverty. She stated that Highland Park requires an Area Redevelopment Plan to ensure adequate planning for the transition of the community, given other proposed developments and transportation changes in the area. She stated that any restrictions on a permit would be left up to community associations and volunteers to enforce.

Anne Naumann, of the Highland Park Community Association, also spoke against the appeal. She stated that the subject site is the wrong location for the proposed development because it doesn't meet sound planning principles. She stated that the communities surrounding this parcel are showing evidence of neighbourhood decline and presented information from a number of articles, academic papers, census data, and policy documents about the factors that define a neighbourhood in decline. Ms. Naumann stated that Highland Park was identified by the City of Calgary as one of eight at-risk communities in 2010 and detailed the research by which this assessment was made, including data about: the concentration of poverty, the percentage of vacant and abandoned properties, disinvestment in homes and businesses, the number of businesses and homes requiring major repair, the concentration of businesses serving the underprivileged, and the decline of public education. She continued that such neighbourhoods are at risk of further decline because community leaders start to move away, among other things.

Ms. Naumann described some of the work undertaken in the community as part of the Community and Neighbourhood Services' Strong Neighbours Initiative, including efforts to address social cohesion; access to quality services and infrastructure; health and safety in natural and built environments; and, community economic development. Ms. Naumann expressed concern that all of the work done in the last six years would be wasted by locating an overabundance of affordable housing and additional low-income people in the neighbourhood. She opined that allowing a 100 percent low-income project to go into the neighbourhood would violate the City of Calgary planning principles and fly in the face of years of research done by countless social scientists, who have learned from the errors of the past. She furthered stated that once the decline has reached a certain point, it's very difficult to turn the process around.

Greg Miller, a resident of Highland Park, also spoke on behalf of the Highland Park Community Association. He summarized the main concerns of the community: lack of an operational plan, the incompleteness of the submission, what a discretionary use designation means for assisted living, alignment with the MDP, and if this development

represents a tipping point for the affected communities. Regarding the operational plan, Mr. Miller submitted that assisted living requires a comprehensive 24-hour care model with services and amenities beyond an on-site security guard. He noted that maximum occupancy numbers are not guaranteed. Regarding the incompleteness of the application, Mr. Miller submitted that the drawings are preliminary and not ready for construction, and further, that the CPTED review did not consider the larger neighbourhood, but the site alone. He submitted that an Urban Design Review Panel should consider the external realm of the subject application and that a cumulative impact assessment should consider nearby special care facilities. Further, Mr. Miller submitted that special care facilities should be integrated into host communities; otherwise, such institutions will be set up for failure. Mr. Miller submitted that the basis of discretion is sound planning practice, that the subject application will have a profound impact on adjacent properties, and that assisted living is not compatible with adjacent properties.

Regarding alignment with the MDP, Mr. Miller submitted that the size of the site means that a comprehensive plan is required, that the community sees immense potential in the subject site, which is lost by the limited scope of the application, and that affordable housing is encouraged to be done in partnership. Mr. Miller stated that the original acquisition of land was, in the view of the community association, quite opportunistic. There was an empty hotel and then, after the fact there were the questions about what the community would have to do and if anybody would have any concerns with the development. He further stated that the problem is that it's not just about the building, but the entire parcel. He stated that by not considering the entire parcel, a barrier between Greenview residential and the industrial area is entrenched when there is an opportunity to build a bridge. He stated that the plan lacks communal amenity space and questioned the plan to deliver services that are necessary for assisted living and the commitment to on-site support and resources for the people who would live there.

Upon questioning by the Board, Ms. Naumann stated that, in her opinion, it is not sound planning practice to group all those people into one building in one already at-risk neighbourhood, because it would impact their ability to get out of poverty, to find better employment and to liaise with community leaders. She submitted that the proposed development results in "just dumping additional low-income people in assisted living and dwelling units" in the building. Ms. Bieche stated that the DIC operational plan includes limited services and not wrap-around robust services for the clientele. Ms. Naumann furthered that the clientele requires extensive training and extensive support in order to be successful.

Ms. Naumann stated that the appeal should be denied, but offered suggestions on conditions that would minimize the potentially devastating impacts of the proposed development if the Board were to consider granting the appeal. She stated that not all were in agreement about each condition and that not all conditions were incorporated. She submitted [unedited]:

Conditions Prior to Final Approval of the Development Permit

1. To address the concern about multiple Special Care Facilities already existing in our area and stressing the capacity to absorb more - a Cumulative Impact Assessment needs to be done by an independent body, not the City Planning Department, and if that independent body deems the impact would be too great on this area, the proposed development could not proceed.
2. To address concerns regarding the change in traffic patterns and flow that will be caused by this development – a Transportation Impact Assessment (TIA) should be required to look at the parcel changes, the increase in commercial traffic, as well as the impact on Edmonton Trail from the planned Green Line LRT, as well as the impact of the widening of McKnight Blvd & resulting widening of Edm Trail NE at that intersection (which would also impact the landscaping plan). If that TIA determines that the impact would be too great on this area, the proposed development would need to be significantly revised to address these concerns.
3. To address concerns over the unknown current socio-economic data for Greenview, given that fewer than 50% of households in Greenview provided response data for the 2011 voluntary National Household Survey – a comprehensive study of the same kinds of statistical measures as collected by Statistics Canada in the Long Form Census should be collected and analysed for the area of Greenview prior to a Building Permit being issued so as to determine the current status of residents in the area. If the study's results show that the indicators of neighbourhood poverty and decline remain at the same level or have become higher, the proposed development could not proceed.

Conditions Prior to Granting a Building Permit

1. To address the lack of trust between the community & area businesses, and the DI as the operator of this facility - an independent third-party mediator that acceptable to both parties should be assigned to negotiate “afresh” through to signing of a Good Neighbor Agreement (GNA) document with representatives from the Drop-In-Centre and the community association who were NOT involved in the development of the draft GNA that has been presented by the DIC in their package
2. To address the concerns of the CPTED review not being comprehensive – a new CPTED review must be completed and reviewed by the Planning Authority prior to granting a Building Permit.
3. To address the concerns about potential criminal or inappropriate activity occurring along the west side of the building – the landscaping plan should be reviewed from a CPTED perspective to ensure it doesn't obscure the view of the existing community residents so they are able to have “eyes on the street”, i.e. able to see the activity occurring in front of the building area along Edmonton Trail NE.

Conditions Prior to Granting a Residential Occupancy Permit

1. To address concerns of a derelict exterior – the building must be painted or clad, and updated architectural features added to modernize and update the exterior façade of the building.

2. To address the concerns regarding the building potentially being used as a shelter – the use of this facility as a Temporary Shelter or an Emergency Shelter should be forbidden.
3. To address the concerns regarding the building potentially being used as a working man's hotel – Renovations as planned to convert the hotel rooms to studio, 1 BR and 2 BR apartments with kitchens must be complete before occupancy permit is granted.
4. To address the concerns regarding the building being used to house significantly more than the 86 as was suggested by the applicant within the 79 rooms - the building capacity should be rated as a maximum occupancy of 100, which would allow residents to have a friend stay overnight.
5. To avoid concentrating poverty in this area and further driving the neighbourhood into decline – this facility should have a maximum of 15 % of the residents as people living below the poverty line (which is 1 or 2 % within the average poverty rate within Calgary). This can be achieved with a means test, similar to that used by Calgary Housing Corporation.
6. To address the lack of a fully developed operational plan by the DI as the operator of this facility – this facility should be required to be run in partnership with another organization that has experience in running a facility for formerly homeless individuals under the "Housing First" model, provided that this organization is one that is acceptable to the community & area businesses.
7. To alleviate the concern that the commercial space will be made available but will remain empty – commercial space should be 75% leased before resident occupancy permit is granted.
8. To address the concerns regarding screening of residents – The units should not be open to custodial care residents, people on early release from incarceration, people undergoing addictions treatment, people with criminal background offences such as sexual assault/murder/attempted murder/aggravated assault/other violent crime/theft over \$5000/drug trafficking/ and other similar indictable offences.
9. To address the concerns that the representatives of the community and area businesses have not seen the final plans and drawings for the site – final drawing must be provided to the Community Association offices for Thorncliffe-Greenview, and Highland Park, as well as to the elected representative of the Greenview Business Association.

Conditions After Receiving a Residential Occupancy Permit

1. To address the apparent lack of a plan for support within the Assisted Living portion of the facility – the facility should require, at the start of occupancy of the building, on-site case management and support staff (in addition to any security staff) be present at all times, at a ratio of 5 residents to 1 staff between 7 am and 11 pm, and 10 residents to 1 staff between 11 pm and 7 am.

2. To address the apparent lack of plan for support within the Assisted Living portion of the facility – Assisted Living residents, at least for the 1st 6 months of their stay at the facility, at the start of occupancy of the building, should also be required to see a Nurse Practitioner or Physician at least once every 2 weeks, or more frequently if required by their physical or mental condition.
3. To address the apparent lack of a plan for support within the Assisted Living portion of the facility – at the start of occupancy of the building, Assisted Living residents, at least for the 1st year of their stay at the facility, and longer if medically necessary should also be required to attend counseling or psychiatric sessions at least once a month to help them address the root causes and contributing factors prior to their homelessness.
4. To address the concerns over insufficient support for the Assisted Living residents with regard to meal preparation – at the start of occupancy of the building, the facility will provide on-site meal preparation for at least lunch and supper, 7 days a week, based on a menu designed by a nutritionist, for at least the 1st 6 months of each Assisted Living resident's stay, and longer if required by the resident's physical or mental condition.
5. To address the concerns over insufficient support for the Assisted Living residents with regard to transitioning out of "chronic homelessness" – at the start of occupancy of the building, the facility will require the Assisted Living residents to attend at least twice per week classes or one-on-one sessions (both on-site and off-site) on topics including: a) nutrition, b) budgeting, c) cooking & food preparation, d) food shopping strategies, e) shopping strategies for other necessities, f) self-care, g) health care & determining when it is necessary to see a Dr. or go to Emergency.
6. To address the concerns over insufficient support for the Assisted Living residents with regard to transitioning out of "chronic homelessness" and integrating into the community at large – at the start of occupancy of the building, the facility will require the Assisted Living Residents, for at least 20 hours per week, to a) attend education classes, and/or b) attend or seek paid employment, and/or c) attend off-site volunteer work, and/or d) attend off-site counseling or support group sessions.
7. To address the concerns that the requirements set in place to minimize the impacts on the adjacent neighbourhoods and businesses remain – all conditions as outlined should apply to any future operator or owner of this facility.

Submission of the Greenview Business Association

Kim West, representing the Greenview Business Association and its business members located in the commercial/industrial area to the east of the proposed development, addressed the Board. She stated the business area collectively employs over 3,000 people. The businesses are concerned about the security and revitalization of the area. Ms. West mentioned that Ms. Newman of the DIC advised them during some of the information sessions that some of the clientele of the DIC more than likely have drug or alcohol addictions. They expressed concerns about the safety to the individual business owners and their tenants. She referenced the comments by the CPC members. She

stated that the appellant has not committed to speak about the future use of the subject building and there is a lack of detail about the proposed development. A proposal with assisted living does, in their opinion, not fit into this area. They feel that, as a result of the proposed development, the business park properties will be vulnerable to the likely possibility of higher crime in the area, vagrancy on or around the properties, and losing long-term tenants, creating a loss of revenue and possible reduction in property values.

Nevin Merrells, co-owner of a business in the Greenview Industrial area, MTM Equipment Rentals located at 604 46 Avenue NE, and home owner residing in the Thorncliffe community, also addressed the Board. In his opinion, the plan to renovate and revitalize the derelict hotel into a low income apartment building is viable but is poorly planned and does not revitalize the community in a positive way. They are concerned about safety and the possible increase in crime and drug issues within the area. The Greenview Business Association has lost trust in the DIC's ability to develop and manage the proposed project. They question the costs of the renovations and, in his opinion, the DIC does not have a strong budget for the project. Mr. Merrells advised that the building was built in 1966 and there could be asbestos. He questions whether the building will be brought up to code. He stated that the DIC has not given the members of the Greenview Business Association any confidence that the subject building will not become a shelter in the future. They do not want a repeat of what occurred during the 2013 flood event when the building was used as a shelter. They are concerned about the revitalization of the surrounding area.

Other Submissions

Grant Symon, who resides at 28 Blackthorn Road NW, addressed the Board in opposition to the appeal. He stated that there are already 6 non-permitted affordable addiction centres in the community with at least three more planned. In his opinion, affordable housing needs to be dispersed throughout Calgary to ensure a high quality of life for all Calgarians and they need to be of small scale such as those in Denver, Colorado. He suggested that other more appropriate businesses and uses should be proposed for the site. He stated that the DIC's downtown facility is a destination for the homeless and addicted persons. He stated that nobody will monitor the future permitting or the zoning application for the subject property. He mentioned that their communities have given enough support in the need against homelessness. He referenced numerous conditions that, in his opinion, should be imposed on a permit if the Board would consider approving the development.

Patricia Thair, who resides at 4721 Edmonton Trail NE, spoke in opposition to the proposed development. She lives directly across Edmonton Trail from the site. She stated that people paying at or below market rent do not have access to the services for the assisted living in the building. In her opinion, that is not fair and will create segregation. She also submitted that the units as proposed do not have complete kitchens. In her opinion, there should be minimum terms for the leases in order to avoid transient behaviour. Further, she stated the scale of the project is too large for the neighbourhood. She submitted that the DIC does not always treat their clientele fairly. She questioned the services the DIC is providing to their clients.

Mitch Nixon, a longtime resident in the community of Greenview, also addressed the Board in opposition to the appeal. He stated that the fact that the building will have 24-hour surveillance indicates that the community should be concerned about the type of clientele that will be staying in the building which is an issue in his opinion. People with substance abuse issues will live in the building bringing these persons into their neighbourhood. He stated, "We have facilities in that neighbourhood to deal with those people and we do not need to be a dumping ground for that type of clientele."

Ruth Negata, who lives at 336 Greenfield Road, expressed concerns regarding the proposed development. She stated she has nothing against special needs agencies. She referred to what happened in her neighbourhood during the 2013 flood period; people had to lock their doors and windows. In her opinion, each unit in the proposed facility should be a self-sustained family unit. She would prefer to see seniors living in the building.

Monique Neish, who resides at 441 Greenview Drive, spoke against the proposed development. She stated that if the development would be approved the burden will be on the community to report problems if the DIC does not conform to the conditions of the permit.

Written Submissions

The Board received numerous letters in opposition to the appeal and application as well as letters in support of the appeal and application.

Preliminary Issues

Submission of Mr. Harker

Harry Harker, a registered professional planner in the Provinces of Alberta and British Columbia and member of the Canadian Institute of Planners, came forward at the hearing and requested to be heard by the Board. He stated that he was involved in the charette process as a consultant and that he would offer his expertise to the Board in providing his opinions on the proposed development and subject application.

The Board took into account that the community associations objected that the Board would hear from Mr. Harker. The Board notes that it is not an evidence seeking body. Mr. Harker was neither called by the appellant as a witness nor by any of the other parties to the appeal.

The Board determined that Mr. Harker is not affected by the proposed development and he is not an affected person as contemplated in section 687(1)(d) of the *Municipal Government Act*, RSA 2000, c M-26, nor is he a person given notice of the hearing as contemplated in section 687(1)(c) of the Act.

Submissions of Elected Officials

The Board received a letter from Michelle Rempel, MP Calgary Nose Hill, in opposition to the appeal.

The Board received a letter from Dr. David Swann, MLA Calgary Mount View, in support of the appeal.

The Board ruled that the aforementioned elected officials are not an “affected person” as stipulated in section 687(1)(d) of the *Municipal Government Act* nor are they a person given notice of the hearing as contemplated in section 687(1)(c) of the Act. The Board finds that a member of the Federal Parliament, an MP, a member of the Provincial Legislature, an MLA, or a member of City Council are not in and of themselves affected by the proposed development and therefore have no standing regarding the appeal. They represent their constituents in their capacity as elected officials. The Board, therefore, did not consider the aforementioned letters and places no weight on them.

Previous Development Permits/Subdivision File

The Board reviewed the following files that were submitted to the Board by the City Administration/Development Authority’s representatives during the hearing process: DP89-3215 – McKnight Plaza Approval; SB89-Y-293/34C – Subdivision; and DP98/2188 – Benner Site. The Board found these approvals relevant respecting the subject development permit application. All other development or subdivision files submitted to the Board were not reviewed by the Board. The Board allowed the parties to inspect the submitted files and after due consideration allowed the parties copies of these materials to be made solely for the purpose of the appeal and for the parties’ submissions to the Board. The Board considered the parties’ submissions in this regard.

Decision:

In determining this appeal, the Board:

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

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

Prior to release conditions

The following requirements shall be met prior to the release of the permit. All requirements shall be resolved to the satisfaction of the Development Authority:

Planning:

1. Submit a total of eight (8) complete sets of amended plans (file folded and collated) to the Planning Generalist that comprehensively address the prior to release conditions of all Departments and the Subdivision and Development Appeal Board (SDAB) as specified below.

The amended plans shall be in accordance with the directions of the Subdivision and Development Appeal Board as per decision SDAB2015-0142.

In order to expedite the review of the amended plans, please include the following in your submission:

- a. Four (4) of the plan set(s) shall highlight all of the amendments.
- b. Four (4) detailed written response(s) to the conditions of approval document that provides a point by point explanation as to how each of the prior to release conditions were addressed and/or resolved.

Please ensure that all plans affected by the revisions are amended accordingly.

2. The amended plans to the satisfaction of Development Authority shall indicate reconfiguration of the main/ground floor of the building as per Slide 13 of the amended plans, dated April 12, 2016, as submitted at the hearing of the Subdivision and Development Appeal Board on April 12, 2016, showing additional amenity space, labelled as "potential main floor amenity space 495 square metres" replacing the originally proposed retail and consumer use space referred to as "bay C-1" on Slide 12 with "main floor amenity space 495 square metres". A relaxation of the Land Use Bylaw for this reconfiguration is granted accordingly.
3. Show that the existing access point/entrance, located on the north side of the main floor, labelled as "Commercial Entry" on Slide 12 of the plans dated April 12, 2016, shall remain as per the current configuration. Re-label the entry appropriately to the revised use.

4. Indicate the outdoor amenity spaces, public spaces, and soft landscaped areas (activity or gathering) as shown on the amended plans (Side 8) dated April 12, 2016 presented at the SDAB hearing. The amended plans shall include the west programmed amenity area and the east programmed amenity area as shown on the plans dated April 12, 2016 presented to the Board. The plans shall also include a child friendly play area and may include a garden for residents. Re-label the entry appropriately to the revised use. The amenity spaces, public spaces and soft landscaped areas are to be labelled as for the use of the residential tenants of the building (i.e. all residents of the assisted living units and dwelling units located in the building).
5. Add a seating area under the existing canopy on the west facade of the building.
6. Add a uniform sign band on the south fascia above the commercial bays.
7. Include windows on the east side of the main floor as per Slide 11 of the amended plans dated April 12, 2016 submitted at the SDAB hearing.
8. Remove the project scope boundary lines and notations to that effect from the plans. The development permit and development approval pertain to the entire legal parcel.
9. Assign two parking stalls in front of the west facade of the building, centred at the west entrance, at the location of the canopy/overhang, to be used for the purpose of passenger drop-off/pick-up. Place a sign indicating "short term parking limited to 15 minutes" for each stall. Accordingly place annotation to this effect on the plans.
10. Relocate the two handicap parking stalls and curb cuts on the west side of the building, shown on Slide 10 of the plans dated April 12, 2016, from the south side of the pedestrian cross walk as shown on Slide 10, to beside the passenger drop-off/pick-up stalls in front of the main entrance canopy shelter. Amend the plans accordingly. The other handicap parking stalls (one on the north side of the building and the one on the south side of the building) shall remain as shown on plans dated April 12, 2016.
11. Extend the west side perimeter landscaping, consisting of trees and shrubs as depicted on Slide 1 of the plans dated April 12, 2016, along the entire west side of the parcel along Edmonton Trail, excluding the vehicular driveways and pedestrian access points. The landscaping shall include the planting of trees and shrubs along Edmonton Trail for the southerly portion of the parcel, to the satisfaction of the Development Authority.
12. Amend the plans to update the landscaping plans as a result of all the amendments and modifications to the plans required by the conditions of this permit.

13. The chain link fence along the entire east side of the property must be a minimum of 1.8 metres in height and shall be extended to the south property line and shall be further extended to the west along the south property line to the northeast corner of the Benner building, to ensure there is no access to the parcel to the south. There shall be no gate or other opening in the fence that would allow access to the Nose Creek area.
14. The plans must show all utility and/or servicing lines.
15. Indicate with annotations on the plans accordingly, any improvements to the exterior of the building façades.
16. Indicate with an annotation on the plans that the building façades shall be painted in a visually appealing coordinated colour scheme that will also minimize the impact of the roof top mechanical room.
17. Add an annotation to drawing DP-1.3: "Pavement surface irregularities to be rehabilitated across the entire parcel."
18. Add an annotation on the plans indicating: "Internal and external monitoring security cameras shall be installed around all sides of the building and on the parcel."
19. Amend plans on all pages showing parking stall assignments by adding the following annotation: "Assignment of stalls for information and Bylaw check purposes only. This in no way assigns stalls for specific uses or infringes on any existing parking agreements or provides requirements for future parking agreements."

Urban Development:

20. Amend the plans to:

Waste and Recycling Services – General

- a. Provide protection details to prevent damage to the wall of the waste and recycling enclosure. Refer to the Waste & Recycling Services Requirements: Design Guidelines Section 1.5, for details <http://www.calgary.ca/UEP/WRS/Documents/WRS-Documents/WRS-Development-Requirements.pdf>
21. Submit three (3) sets of the Development Site Servicing Plan details to Development Servicing, Urban Development, for review and acceptance from Water Resources, as required by section 5(2) of the *Utility Site Servicing Bylaw 33M2005*. Contact developmentsservicing2@calgary.ca for additional details. Please note:

- Ensure 100mm water service is sufficient for sprinkler system in the building
- Storm calculations are required for the whole site
- Servicing for the parcel to the north (4820 Edmonton TR NE) comes through 4804 Edmonton TR NE and is protected via a Private Utility Easement Agreement registered on title.

For further information, refer to the following:

Design Guidelines for Development Site Servicing Plans

http://www.calgary.ca/PDA/DBA/Documents/urban_development/publications/DS_SP2012.pdf

Development Site Servicing Plans CARL (requirement list)

<http://www.calgary.ca/PDA/DBA/Documents/carls/development-site-servicing-plan.pdf>

22. Remit a performance security deposit (certified cheque, bank draft, letter of credit) for the proposed infrastructure listed below within the public right-of-way to address the requirements of the Business Unit. The amount of the deposit is calculated by Roads and is based on 100 per cent of the estimated cost of construction.

The developer is responsible to arrange for the construction of the infrastructure with their own forces and to enter into an Indemnification Agreement with Roads at the time of construction (the security deposit will be used to secure the work).

Roads

- a. Rehabilitation of existing driveway crossings, sidewalks, curb and gutter, etc., should it be deemed necessary through a site inspection by Roads personnel.
 - b. Lengthen the bus pad adjacent the site to 15.0m to BRT Standard.
 - c. Provide 2.0m wide separate walk between the driveway and bus pad.
 - d. Construction of a bus shelter along Edmonton Trail, to the standards of Roads and City Transit.
23. Remit payment (certified cheque, bank draft) for the proposed infrastructure listed below within the public right-of-way to address the requirements of the Business Units. The amount is calculated by the respective Business Unit and is based on 100 per cent of the estimated cost of construction.

The developer is responsible to coordinate the timing of the construction by City forces. The payment is non-refundable.

Roads

- a. Street lighting upgrading adjacent to Edmonton Trail NE.

Transportation:

24. Amend the site plan to include curb stops for all parking stalls adjacent to pedestrian sidewalks. Concrete wheel stops shall not exceed 100mm in height above the parking stall surface and shall be placed perpendicular to the parking stall depth, 600mm from the front of the parking stall.

Parks:

25. Amend the plans to include fencing capable of catching debris and eroding soil along the eastern property line (construction fencing with silt curtain attached).

Permanent conditions

The following permanent conditions shall apply:

Planning:

26. The development shall be completed in its entirety, in accordance with the approved plans and conditions.
27. No changes to the approved plans shall take place unless authorized by the Development Authority.
28. The approval is for the uses and development as applied for, including but not limited to changes to the uses, site plan and floor plans.
29. Any changes to the intensity of the approved uses on the parcel shall require a new development permit.
30. A development completion permit shall be issued for the development before the use is commenced or the development occupied. A development completion permit is independent from the requirements of Building Permit occupancy. Call Development Inspection Services at 403-268-5311 to request a site inspection for the development completion permit.
31. This permit is granted on the basis that parking and access for the adjacent parcels to the immediate north and south of the subject parcel will continue to be provided in accordance with the existing Parking and Access Agreements on Title. Any change to the provision of parking and access would require a new application for such change.

32. Assignment of parking stalls, as shown on the approved plans, is for informational and bylaw check purposes only and shall in no way infringe on existing parking agreements on this site or provide requirements for future parking agreements.
33. Sufficient parking for the parking counts obtained in condition 31 shall remain on the site for the life of this development.
34. The buildings on the site shall not be used as an emergency shelter or associated use, not even on a temporary basis.
35. The building will be staffed twenty-four (24) hours a day, seven (7) days a week. There shall be a minimum of one security staff person on site at all times. In addition, during business hours there shall be: (a) One (1) maintenance/rental coordinator (for all tenants/residents); and (b) one (1) supported living coordinator for the residents of the assisted living units.
36. All access and exit points to the building for the residents shall be secured and monitored at all times.
37. Internal and external monitoring security cameras shall be installed and maintained around the building and on the parcel.
38. Exterior lighting shall be provided and the lighting shall comply with Division 4 of the Land Use Bylaw. Light must be directed downwards so it does not negatively affect residents to the west of Edmonton Trail.
39. The applicant or property owner shall establish a Citizens Liaison Committee which, at a minimum, shall meet semi-annually. The applicant or property owner shall provide a point of contact including a dedicated phone number and email address where surrounding residents, neighbours and businesses can communicate any concerns or complaints regarding the operations of the development. The contact information shall be provided to the Thorncliffe-Greenview Community Association and the nearby business associations, and shall also be placed on the property owner's website. All concerns or complaints regarding the behaviour of residents at the site will be dealt with within a 24 hour period in a manner as determined by the applicant or property owner, acting reasonably. All other concerns of an operational nature will be dealt with in an expedited manner as much as reasonably possible in a reasonable manner as determined by the applicant or property owner, acting reasonably. To the extent authorized by applicable privacy legislation, a log book of communications, complaints, or concerns, as well as a documented listing of corrective actions taken, shall be kept and made available to the Citizens Liaison Committee, Thorncliffe/Greenview Community Association, nearby business associations and The City of Calgary, upon request.

40. The applicant or property owner shall, at its sole expense, pay for the construction of a bus shelter on the east side of Edmonton Trail.
41. Staff of the applicant or property owner and the commercial users of the building shall park on the south side of the parcel. On-site staff of the development, representatives of the applicant or property owner, and the staff of the retail or commercial tenants of the building shall park on the south side of the parcel.
42. The building exterior shall be upgraded and painted in accordance with the amended plans.
43. The amenity space on the main/ground floor and in the basement shall be available to all residents of the building (i.e. all residents of the assisted living units and dwelling units located in the building), as programming may require.
44. The west and east programmed outdoor amenity areas as shown on the approved plans shall be available to all residents of the building (i.e. all residents of the assisted living units and dwelling units located in the building) as programming may require.
45. The applicant or property owner shall make the loading area located at the northwest corner of the property as indicated on Appendix C, Page 5 of the plans presented at the hearing of the Subdivision and Development Appeal Board on March 22, 2016, available to the owner and tenants of 4820 Edmonton Trail NE on reasonable terms.
46. The applicant or property owner shall make the proposed waste and recycling facilities located at the northwest of the property available to the businesses and tenants of 4820 Edmonton Trail NE on reasonable terms.
47. All landscaping and/or vegetation shown on the approved plans shall be retained and maintained throughout the life of the development. Any of the landscaping or vegetation which perishes shall be replaced on a continuing basis with a comparable variety, species and size to the satisfaction of the Development Authority.
48. All chimneys and flues shall be enclosed with materials compatible with the exterior finish of the building, as shown on the approved plans.
49. All roof top mechanical equipment shall be screened as shown on the approved plans.
50. All areas of soft landscaping shall be irrigated as shown on the approved plans.
51. Parking and landscaping areas shall be separated by a 150mm (6 inch) continuous, poured in place, concrete curb or equivalent material to the

satisfaction of the Development Authority, where the height of the curb is measured from the finished hard surface.

52. Each parking stall, where located next to a sidewalk, shall have a properly anchored concrete wheel stop or equivalent material to the satisfaction of the Development Authority (100mm in height and 600mm from the front of the parking stall).
53. Handicapped parking stalls shall be located as shown on the approved plans released with this permit. Handicap parking stalls shall be clearly designated, signed and located close to the entrance of the building with barrier-free accessibility.
54. The garbage enclosure shall be kept in a good state of repair at all times and the doors shall be kept closed while the enclosures are not actively in use for delivery or removal of refuse.

Urban Development:

55. If during construction of the development, the developer, the owner of the titled parcel, or any of their agents or contractors becomes aware of any contamination,
 - a. the person discovering such contamination shall immediately report the contamination to the appropriate regulatory agency including, but not limited to, Alberta Environment, Alberta Health Services and The City of Calgary (311).
 - b. on City of Calgary lands or utility corridors, The City of Calgary, Environmental and Safety Management division shall be immediately notified (311).
56. The developer shall be responsible for the cost of public work and any damage during construction in City road right-of-ways, as required by the Manager, Urban Development. All work performed on public property shall be done in accordance with City standards.
57. Indemnification Agreements are required for any work to be undertaken adjacent to or within City rights-of-way, bylawed setbacks and corner cut areas for the purposes of crane operation, shoring, tie-backs, piles, surface improvements, lay-bys, utility work, +15 bridges, culverts, etc. All temporary shoring, etc., installed in the City rights-of-way, bylawed setbacks and corner cut areas must be removed to the satisfaction of the Manager of Urban Development, at the applicant's expense, upon completion of the foundation. Prior to permission to construct, contact the Indemnification Agreement Coordinator, Roads at 403-268-3505.

58. The grades indicated on the approved Development Site Servicing Plan(s) must match the grades on the approved Development Permit plans. Upon a request from the Development Authority, the developer or owner of the titled parcel must confirm under seal from a Consulting Engineer or Alberta Land Surveyor, that the development was constructed in accordance with the grades submitted on the Development Permit and Development Site Servicing Plan.
59. The proposed development is within the Nose Creek Watershed boundary and is subject to mandatory stormwater volume control measures. Based on the Watershed Management Plan, the average annual release rate from the development site into the City of Calgary's sewer system through on-site service connections shall be no more than 16 mm.
60. For all soil disturbing projects, the developer, or their representative, shall designate a person to inspect all erosion and sediment control practices a minimum of every seven (7) days and during, or within 24 hours of, the onset of significant precipitation (> 12 mm of rain in 24 hours, or rain on wet or thawing soils) or snowmelt events. Note that some practices may require daily or more frequent inspection. Erosion and sediment control practices shall be adjusted to meet changing site and winter conditions.
61. Any drainage from the subject site onto the adjacent environmental reserve upon development completion is not permitted. Unauthorized drainage of the subject site must be resolved to the satisfaction of the Director, Parks and any damage resulting from unauthorized drainage will require restoration at the developer's expense. Resolution of drainage issues must be approved by the Parks Development Inspector. Contact the Development Inspector at 403-268-5325 for an inspection.
62. Stormwater runoff must be contained and managed in accordance with the "*Stormwater Management & Design Manual*" all to the satisfaction of the Director of Water Resources.

Parks:

63. Any damage to public parks, boulevards or trees resulting from development activity, construction staging or materials storage, or construction access will require restoration at the developer's expense. The disturbed area shall be maintained until planting is established and approved by the Parks Development Inspector. Contact the Development Inspector at 403-268-5325 for an inspection.
64. A 1.8 m high fence shall remain on the property line along all shared boundaries with adjacent environmental reserve.
65. There shall be no construction access through the adjacent environmental reserve lands.

66. Public trees located on the environmental reserve adjacent to the development site shall be retained and protected unless otherwise authorized by Urban Forestry. Prior to construction, install a temporary fence around the extent of the branches ("drip line") and ensure no construction materials are stored inside this fence.

Advisory Comments

The following advisory comments are provided as a courtesy to the applicant and registered property owner. The comments represent some, but not all of the requirements contained in the Land Use Bylaw that must be complied with as part of this approval.

Planning:

1. Building Regulations has been circulated with this application but has not yet provided comments. In accordance with the *Safety Codes Act*, buildings permits may be required for the development.
2. The applicant, developer, property owner or operator is encouraged to enter into a "Good Neighbour Agreement" with the Thorncliffe/Greenview Community Association and any nearby residents or businesses who wish to participate.

Urban Development:

3. The developer is responsible for ensuring that:
 - a. The environmental conditions of the subject property and associated utility corridors meet appropriate regulatory criteria and appropriate environmental assessment, remediation or risk management is undertaken.
 - b. Appropriate environmental assessment(s) of the property has been undertaken and, if required, a suitable remedial action plan and/or risk management plan has been prepared, reviewed and accepted by the appropriate regulatory agency(s) including but not limited to Alberta Environment and Alberta Health Services.
 - c. The development conforms to any reviewed and accepted remedial action plan/risk management plans.
 - d. All reports are prepared by a qualified professional in accordance with accepted guidelines, practices and procedures that include but are not limited to those in the most recent versions of the Canadian Standards Association and City of Calgary Phase I & II Environmental Site Assessment Terms of Reference.
 - e. The development is in compliance with applicable environmental approvals (e.g. Alberta Environment Approvals, Registrations, etc), Alberta Energy Regulator approvals and related setback requirements, and landfill setback requirements as set out in the Subdivision and Development Regulation.

If the potential for methane generation or vapours from natural or contaminated soils and groundwater has been identified on the property, the developer is responsible for ensuring appropriate environmental assessment(s) of the property has been undertaken and appropriate measures are in place to protect the building(s) and utilities from the entry of methane or other vapours.

Issuance of this permit does not absolve the developer from complying with and ensuring the property is developed in accordance to applicable environmental legislation.

4. The locations and design of driveways must be approved by Transportation Planning. New driveways including driveway modifications, removal and rehabilitations of unused driveway crossings or relocations, sidewalks, wheelchair ramps, and lane paving must be constructed to City standards at the developer's expense. Obstructions such as storm catch basins, hydrants, power poles, etc., must be relocated to City standards at developer's expense.
5. Water connection exists to site (100mm). Prior to reuse of the existing water service, contact the Development Technician, Water Resources at 403-268-5739 or 403-268-5006.
6. Show details of servicing and metering on Development Site Servicing Plan. Provide adequate water meter locations (100mm or larger, room adjacent to an exterior wall, 50mm or less, label water meter location) where services enter building. If static pressure exceeds 550 kPa install pressure reducing device after meter.
7. Maintain a 3.0m separation between Enmax facilities (power poles, light standards, transformer pads, catch basins, etc.) with the proposed water service.
8. Review with Fire Prevention Bureau at 403-268-8742 for on-site hydrant coverage and Siamese connection location(s). A stamped site servicing (hydrant location plan) plan by the Fire Prevention Bureau is to be submitted at the Development Site Servicing Plan stage. (Principal entrance(s) are to be labelled on the plan.)
9. No construction is permitted over existing water service (100mm or larger).
10. If further subdivision occurs in the future (including strata subdivisions), each titled parcel must have separate service connections to public mains (water and sanitary). Contact the Leader, Development Approvals, Water Resources at 403-268-4636 for details.
11. Sanitary connection exists to site.
12. Arrange for a video inspection by city personnel prior to the reuse of existing sanitary sewer(s). Contact the Leader - Public Response, at 403-268-1233. If

existing services are found to be unsuitable for reuse, new services shall be installed at the developer's expense.

13. Storm sewer connection exists to site. Storm calculations are required for the entire site.
14. Best Management Practices (BMPs) are activities or practices that are designed to reduce runoff volume and prevent or reduce the release of pollutants to receiving waters. Operation and maintenance manual and sample maintenance log shall be provided to the owner in case there are any BMPs located within the property as per the current "Stormwater Management & Design Manual" Section 4.13. Appropriate Source Control Practice checklists must be completed and submitted to Development Approvals (<http://www.calgary.ca/UEP/Water/Pages/Specifications/Submission-for-approval-/Development-Approvals-Submissions.aspx>). For more information contact Development Approvals at 403-268-4636.
15. All on-site sewers are to be designed to City of Calgary specifications.
16. Ensure elevations of building slab and/or any building openings are 0.3m minimum above trap low spill elevations or the 100 year elevation, whichever is higher.
17. Full pipe design flows (typically 1:5 year) must be treated through the oil/grit separator. Bypass flows are not permitted.

An average removal rate of 85% TSS for particle sizes 50um and greater is required on an annual basis.

The following minimum information must be submitted to the Development Approvals Team:

- a. The manufacturer must submit a performance table showing average annual removal rates for all years of data. Each year is required to meet 85% removal rate.
- b. Calculations/information showing how removal rates were achieved or modeled.
- c. A minimum of 39 years of Calgary Airport meteorological rainfall data must be used.
- d. Table 7.2 (column 2) on page 7-9 of the City of Calgary's "*Stormwater Management and Design Manual*" must be used for particle size distribution and settling velocity.
- e. By way of a letter, the consultant must verify that the City of Calgary's criteria have been met.

Note: These are interim criteria that must be adhered to pending further investigation and performance monitoring.

18. As per The City of Calgary Drainage Bylaw 37M2005, the developer, and those under their control, are responsible for ensuring that a Drainage or Dewatering Permit is obtained from Water Resources prior to discharging impounded runoff (caused by rainfall and/or snowmelt) seepage or groundwater from construction site excavations or other areas to a storm sewer. The developer, and those under their control, is responsible for adhering to all conditions and requirements stipulated in the Drainage or Dewatering Permit at all times. For further information, contact the Water Resources' Erosion Control Coordinator at 403-268-2655, the Corporate Call Centre at 311 or visit www.calgary.ca/waterservices/esc (Drainage and Dewatering Permit applications can be downloaded from this website).
19. Stormwater emergency escape routes must be to a public roadway.
20. At the time of occupancy, the owner is to arrange for commercial waste collection. For City of Calgary services, please contact Commercial Contracts, Waste & Recycling Services at 403-268-8400.
21. Waste and recycling collection facilities are to be constructed in accordance with the current "Waste & Recycling Services Requirements: Design Guidelines", <http://www.calgary.ca/UEP/WRS/Pages/Development-permit-review-and-requirements/Development-Permit-Review-and-Requirements.aspx>

Contact Gord Macaulay, Waste and Recycling Services Specialist at 403-268-8445 for further site specific details.

Parks:

22. The Streets Bylaw (20M88) and the Tree Protection Bylaw (23M2002) contain clauses intended to protect trees growing on Public Land. No person shall remove, move, cut, or prune a Public Tree or cause a Public Tree to be removed, moved, cut or pruned without prior written authorization from the Director, Parks. A copy of the bylaw can be found at www.calgary.ca. Parks does not permit the removal of public trees to facilitate development unless all options to retain and protect are exhausted.
23. As part of the Tree Protection Bylaw, a Tree Protection Plan will be required when a development, construction activity, or a disturbance occurring on the City Boulevard is within 6 metres of a boulevard tree. For more information about submitting your tree protection plan visit www.calgary.ca and search "protecting trees during construction and development;" alternatively, call 311.
24. The applicant will be required to provide compensation to the City of Calgary for any Public Trees that are removed or damaged. Individual Public Trees can have values ranging in the thousands of dollars depending on size and species. For example, a 50-cm diameter American Elm can have a value of \$8300.00. For further information on tree value and compensation please call 311 or visit www.calgary.ca/parks. Applicants that are unfamiliar with tree protection or tree

appraisal are advised to consult an arborist. Arborists are found in the telephone directory under 'Tree Service'.

25. No stockpiling or dumping of construction materials is permitted on the adjacent park / boulevard.
26. Development activities must ensure that suitable erosion and sedimentation controls are being implemented to protect our environment and drainage systems. Construction activities can result in a rapid increase in erosion and sedimentation. Sedimentation of rivers, streams and creeks can destroy fish habitat, and negatively impact water supplies, flood control, navigation, and recreational activities. Please refer to The City of Calgary's Guidelines for Erosion and Sediment Control:
<http://www.calgary.ca/UEP/Water/Documents/WaterDocuments/escguidelines2001-02-12.pdf>

Reasons:

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's refusal of a development permit application for a change of use to: assisted living (37 units); dwelling units (42 units); retail and consumer service; and changes to site plan – addition of landscaping, parking reconfiguration and waste/recycling area reconfiguration at 4804 Edmonton Trail NE. The property is located in the community of Greenview Industrial Park and has a land use designation of Commercial – Corridor 2 (C-COR2 f3.0h46) District pursuant to Land Use Bylaw 1P2007.

Application

2 The application is for a change of use on the subject parcel to the following uses: "Assisted living" (37 units); "Dwelling units" (42 units); and "Retail and Consumer Service". It also encompasses a number of changes to the site plan: addition of landscaping; parking reconfiguration; and waste/recycling area reconfiguration. The proposed development is for the conversion of the former 120-room hotel and conference centre into a mixed-use building of 37 assisted living units and 42 dwelling units on floors two to seven and retail and consumer service on the main floor of the building/complex.

3 The site is located at 4804 Edmonton Trail NE south of McKnight Boulevard and east of Edmonton Trail. The parcel contains a former seven storey hotel, a single storey commercial building, and a large parking lot with two street entrances and vehicular access points to the two adjacent parcels north and south. The single storey commercial building houses a liquor store and a motor vehicle rental business. The site is bounded on the north by a small commercial plaza (called McKnight Plaza) and on the south by a commercial building containing a number of bays (called the Benner building). The residential community of Greenview is located directly across Edmonton

Trail to the west. Nose Creek is directly to the east. The area to the east of Nose Creek consists of light industrial development.

Development Authority's Decision

4 The Calgary Planning Commission (CPC), acting as the Development Authority in this case, refused the development permit application on two main grounds: (1) Pursuant to sections 35(c) and (d) of the Land Use Bylaw (1P2007) it found the proposed development negatively affects the use and enjoyment of adjacent properties. It accepted the comments and objections contained within the numerous letters received from area residents and businesses objecting to the proposed development; and (2) The use is not compatible with existing adjacent uses due to the nature of the incompatible activities. It considered the proximity of adjacent uses (Pay Day Loans and Liquor Stores) to be a potential detriment to the welfare of potential residents who may be at risk.

5 For the reasons provided below, the Board finds the appellant's evidence and arguments persuasive and allows the appeal.

Legislative Framework

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

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.

Section 146 states:

146 “Assisted Living”

- (a) means a **use**:
 - (i) that has five (5) or more residents;
 - (ii) that may contain **Dwelling Units** within a facility;
 - (iii) that may contain individual rooms having a washroom, bedroom and a sitting area that accommodates residents within a facility;
 - (iv) where there is one or more communal kitchens and dining rooms;
 - (v) where there may be limited on-site health care facilities for the exclusive use of the residents;
 - (vi) where residents may receive limited human health services from on-site health care providers;
 - (vii) where communal social and recreation activities are provided within the **building** or outside; and
 - (viii) that may include a manager’s suite and administrative office;
- (b) is a **use** within the Residential Group in Schedule A to this Bylaw;
- (c) may have a maximum of ten (10) residents when located in a **low density residential district**;
- (d) is not subject to the **density** requirement of a district;
- (e) requires a minimum of 1.0 **motor vehicle parking stalls** per three (3) residents; and
- (f) does not require **bicycle parking stalls – class 1 or class 2**.

Section 188 states:

188 “Dwelling Unit”

- (a) means a **use**:
 - (i) that contains two or more rooms used or designed to be used as a residence by one or more persons; and
 - (ii) that contains a **kitchen**, living, sleeping and sanitary facilities;
- (b) is a **use** within the Residential Group in Schedule A to this Bylaw;
- (c) requires a minimum number of **motor vehicle parking stalls** in accordance with the District the **use** is listed in;
- (d) requires a minimum of 0.5 **bicycle parking stalls – class 1** per **Dwelling Unit** for **developments** greater than 20 **Dwelling Units**; and
- (e) requires a minimum of 0.1 **bicycle parking stalls – class 2** per **Dwelling Unit** for **developments** greater than 20 **Dwelling Units**.

Section 796 states:

Purpose

796 The Commercial – Corridor 2 District is intended to be characterized by:

- (a) commercial development on both sides of **streets**;
- (b) **buildings** located varying distances from **streets**;
- (c) limited automotive **uses**;
- (d) primary access for motor vehicles to **parcels** from **streets** and **lanes**;
- (e) parking located on any of the front, side or rear of **buildings**;
- (f) pedestrian connections from public sidewalks, to and between **buildings**;
- (g) opportunities for residential and office **uses** to be in the same **building**;
- (h) varying **building** density established through maximum **floor area ratios** for individual **parcels**; and
- (i) varying **building height** established through maximum

building height for individual *parcels*.

Section 804 states:

Location of Uses within Buildings

- 804**
- (1) A minimum of 20.0 per cent of the **gross floor area** of **buildings** in the Commercial – Corridor 2 District must contain “Commercial Uses”.
 - (2) **Addiction Treatment, Assisted Living, Custodial Care, Dwelling Units and Residential Care** must not be located in the same **building** as an automotive **use**.
 - (3) **Addiction Treatment, Assisted Living, Custodial Care, Dwelling Units and Residential Care** must not be located on the ground floor of a **building**.
 - (4) “Commercial Uses” and **Live Work Units**:
 - (a) may be located on the same floor as **Addiction Treatment, Assisted Living, Custodial Care, Dwelling Units and Residential Care**; and
 - (b) must not share an internal hallway with **Addiction Treatment, Assisted Living, Custodial Care, Dwelling Units and Residential Care**.
 - (5) Where this section refers to “Commercial Uses”, it refers to the listed uses at sections 797 and 798, other than **Addiction Treatment, Assisted Living, Custodial Care, Dwelling Units, Live Work Units and Residential Care**.

Section 797(2)(x) Lists “Retail and Consumer Services” as a permitted use in the C-COR2 District.

Section 798(3) lists “Assisted Living” and “Dwelling Unit” as a discretionary use in the C-COR2 District.

7 The Board has regard to the following sections of the Municipal Development Plan (MDP), among others:

Section 2.2.4 states, in part:

2.2.4 Complete communities

Objective Foster distinctive, complete communities with a strong sense of place.

Policies

Complete communities

- a. Support the development of complete communities to ensure a compact and well-designed urban form that efficiently utilizes land and infrastructure, provides housing choices at transit-supportive densities, local services and employment and promotes mobility options.
- b. Communities should be planned according to the following criteria for complete communities and provide:
 - i. A range of housing choices, covering a mix of built forms and ownership tenures, at densities that support transit viability, local commercial and other services;

[...]

In section 2.3.1 the MDP states, in part:

2.3.1 Housing

Objective Ensure a choice of housing forms, tenures and affordability to accommodate the needs of current and future Calgarians and create sustainable local communities.

Policies

Housing diversity and choice

- a. Provide for a wide range of housing types, tenures (rental and ownership) and densities to create diverse neighbourhoods that include:
 - i. A mix of housing types and tenures, including single detached, ground-oriented (e.g., duplexes, row houses, attached housing, accessory dwelling units and secondary suites), medium- and higher density and mixed-use residential developments; and,
 - ii. A range of housing choices, in terms of the mix of housing sizes and types to meet affordability, accessibility, life cycle and lifestyle needs of different groups.
- b. Promote a broader range of housing choice for all ages, income groups, family types and lifestyles by:
 - i. Encouraging housing opportunities for low- and moderate-income households in all communities;
 - ii - iii [...]

Sections 2.3.1 further states, in part:

Increased opportunities for affordable housing

- e. Recognize and encourage affordable housing as an integral part of “complete communities.”
 - f. Create affordable housing by encouraging:
 - i. A varied community composition by providing opportunities for small-scale affordable housing to locate in all areas of the city.
 - ii Affordable housing to locate in all areas of the city, with a focus on locations served by the Primary Transit Network and appropriate services, while avoiding an over-concentration of affordable housing in any one area;
- [...]
- vi. The provision of an adequate supply of rental accommodation across the city that is affordable to low-and moderate-income households; and, [...]

Section 2.3.1 further states, in part:

Special care facilities

- g. Accommodate special care facilities within residential and mixed-use communities to provide for a broad range of specialized accommodation and care in order to meet a diverse array of city-wide and community needs, including nursing homes, adult group homes, youth care facilities, rehabilitative homes and transitional facilities.
- h. Special care facilities should be small scale in nature and dispersed throughout the city, in a form that fits with local neighbourhood character.
- i. Discourage an over concentration of facilities serving one type of need in any community.

The MDP in section 2.4 states, in part

2.4.2 Built form

Objective: Promote site and building design that contributes to high quality living environments and attractive, walkable, diverse neighbourhoods and

communities. The section outlines several policies for site and building designs.

Policies

Site and building design

[...]

- d. In Developed Areas, require comprehensive plans when large sites (greater than 1.0 hectare in size) become available for redevelopment. To the greatest extent possible, new development should be integrated into the fabric of the surrounding communities.

[...]

Section 2.6.5 Policies, states, in part:

Policies

- f. Encourage the conversion and reuse of existing buildings.

8 The Board further has regard to all other policies and sections of the MDP referenced by the appellant, affected persons/parties, and Development Authority.

9 The Board also has regard to "The Planning Principles for the Location of Care Facilities and Shelters (2011)", approved by Council on June 13, 2011.

10 The Board considered any policy documents referenced by the appellant, affected persons/parties and Development Authority, and any other City of Calgary Bylaws referred to by the parties.

11 The Board considered the case law referenced by the appellant, the Development Authority, and any of the parties to the appeal.

Analysis

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

13 The Board has carefully reviewed and considered all of the evidence submitted verbally and in writing over several hearing days, which includes over 1,300 pages in the Board report plus over 1000 pages of additional documentation submitted at the

hearing. In addition, the Board reviewed three previous development permits pertaining to the site and the adjacent properties. It took a significant amount of time for the Board to go through all the material.

14 The Board did not consider received letters or emails of those who do not reside in the vicinity of the proposed development. The Board also did not consider the received letters of community associations other than the community associations of Thorncliffe/Greenview and Highland Park. The Board finds that the other community associations and those that reside outside of the aforementioned communities are not affected by the proposed development. They are not considered to be an “affected person” as contemplated in section 687(1)(d) of the *Municipal Government Act*, and they were not given specific notice of the hearing as contemplated in section 687(1)(c).

Main Issue of the Appeal

15 The main issue of the appeal is whether the proposed development is appropriate for the subject parcel from a planning perspective.

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

17 Under Alberta law a property owner has the right to develop his or her property in accordance with the Land Use Bylaw and applicable plans and policies. Under the scheme of the *Municipal Government Act*, statutory plans and the Land Use Bylaw provide the regulatory legal framework which specifies which uses and developments are allowed for parcels of land. Property owners, developers and applicants of development permit applications are entitled to rely on this framework for the development of their land.

18 While the Board is not bound by the rules of evidence, the case law indicates that the Board cannot base its decision on irrelevant evidence, submissions or arguments (*Dallinga v. Calgary (City)*, [1976] 1 W.W.R. 319, 62 D.L.R. (3d) 433 (Alta. C.A.); *Actus Management Ltd. v. Calgary (City)* [1975] 6 WWR 739; and *Crown Parking Co. v. Calgary (City)* (1994), 22 M.P.L.R. (2d) 1, 22 Alta. L.R. (3d) 39, 165 A.R. 355, 89 W.A.C 355 (C.A.), among others. It is the Board’s role to consider planning considerations or associated evidence and arguments to that effect. This is also underscored in the case of *Earth Sciences Inc. v. Calgary (City)* 1978 ALTASCAD 6 (CanLII), (1978) 5 Alta. L.R. (2d) 124 (Alta. C.A.), which indicates that the Board, as a matter of law, must act on the evidence before it (at para 13) and the Board can only consider evidence relevant to sound planning considerations.

19 Under the scheme of the Act and Land Use Bylaw 1P2007, and its operations, a property owner, developer or applicant is entitled to make an application for a proposed development, without being prejudged. The past conduct, action, or errors made by a property owner, developer or applicant when developing their lands is not generally a planning consideration, as held by the Court in the case of *Dallinga v. Calgary*. The

Development Authority's counsel referenced the case of *Dennis McGinn Holdings Ltd v Brazeau (County)*, 2016 ABCA 3, and opined that based on this case law it is open to the Board to consider whether and to what extent evidence of character and past conduct is relevant in these circumstances. The Board notes that in *Dennis McGinn Holdings*, the past conduct in issue was a previous bylaw enforcement matter relating directly to the subject development. The current case differs. In *Dennis McGinn Holdings*, the Court stated that a subdivision and development appeal board has discretion to determine what matters are relevant. The lands could be sold tomorrow to another operator who could proceed under the same permit. The Board finds that the past conduct of the applicant is irrelevant to this appeal, and the development should be reviewed on its own merits.

20 In determining an appeal the Board cannot deal with irrelevant or immaterial evidence. Further, the Board cannot deal with submissions that lack evidentiary foundation. The Board can only take into account relevant planning considerations and relevant evidence and arguments.

21 The community associations stated that there is a lack of trust in the DIC and how it would operate the proposed development and that they fear that effectively the building would be used as a shelter.

22 In determining an appeal the Board cannot base its decision on innuendo, fear, and lack of trust between the parties.

23 The former hotel building was used as a temporary emergency shelter during the 2013 flood, which was an extraordinary event in the city. Unfortunately, for a period of time this had a negative impact on the community. The appellant acknowledged this. However, the Board notes this cannot be held against the DIC in the review of the proposed development which clearly is not an emergency shelter. It is irrelevant for the subject appeal and application.

24 The community associations, business association, and other opponents made many assertions about the proposed development. Without diminishing the credibility of these individuals, the Board finds that these assertions are anecdotal and merely statements. These assertions and arguments are to a large extent unsubstantiated and are lacking in evidentiary foundation or sound planning considerations. 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 or basis of relevant and sound planning considerations. The Board finds that this principle or factor applies to opinion-based evidence too, as was set out in case authority such as *Esposito v Alberta (Workers' Compensation Board)*, 2009 ABQB 188 (CanLII). The weight appropriately given to opinion evidence depends on the facts which underlie the opinion. In order to assess the veracity of opinion evidence, the Board must consider whether the opinion is sufficiently grounded in facts. The Board finds that, in this instance, many of the opponents' assertions are opinions without substantiating evidence. Therefore, the Board cannot place much weight on their assertions and evidence.

25 The opponents raised social issues and concerns regarding the clientele or residents of the proposed development. Social issues associated with a development or use can to some extent have planning impacts but not all social issues are relevant planning considerations. There has to be some correlation in terms of substantiated undue impact from a proposed development. The Board finds it significant that the proposed development is not a shelter and the Land Use Bylaw does not allow for that use on the property under the current land use designation/zoning.

26 The Board finds that many of the opponents' arguments lack evidentiary support and are more likely based on a lack of familiarity with the proposed development and the operations of the DIC. The Board places no weight on these arguments. The Board notes that the general public associates the DIC primarily with the downtown shelter that it operates. Besides the DIC's downtown shelter, the evidence shows that the DIC also operates dwelling units and non-shelter residential units in buildings at other locations in the city. The DIC and their facilities exist, are established as a fact of life, and are part of the fabric of society in Calgary. In a growing and cosmopolitan city such as Calgary there is a need to increase housing stock for formerly homeless persons and to provide assistance to end homelessness in the city. These kinds of facilities, irrespective of the type of development, need to be located somewhere. This is a factor to be considered.

27 The Board finds there is no evidence that the proposed development would result in higher crime in the area, vagrancy on or around the properties, or in the loss of long term tenants resulting in a loss of revenue for property and business owners, as the Greenview Business Association alleged.

28 The Board takes into consideration that a Crime Prevention through Environmental Design (CPTED) analysis was undertaken by the Calgary Police Service and the Calgary Police Service expressed no concerns with respect to the location of the proposed facility and the programs provided by the facility or within the proposed development in general. Furthermore, the Board notes that a CPTED review regarding a development permit application is limited in scope; it is not a planning review of a development permit application but is limited to architectural design aspects of a proposed development in terms of crime prevention. It is not the role of a Police Officer who conducts a CPTED to review or assess a proposed development on planning factors or merits. That is the purview of the Development Authority.

29 The community associations and the opponents to the development, among other things, stated that the consultation process was flawed, which opinion was shared by some members of the CPC. The community associations argued that the DIC bought the subject property without informing them about their plans. In the Board's view, this is irrelevant for the review of a development permit application. The purchase and/or the ownership of a property are in and of itself not a planning consideration.

30 There is no requirement in the Land Use Bylaw that an application for a development permit must have the consent of community associations or adjacent property owners or adjacent residents.

31 Furthermore, there are no mandatory provisions in the MDP or Land Use Bylaw that require an applicant to consult with neighbouring property owners, users, community associations, or other potential stakeholders about a development permit application or a proposed development. Nor does the MDP or Land Use Bylaw prescribe a circulation of a development permit application to stakeholders during the Development Authority's review process or before the Development Authority makes a final decision about a development permit application, unlike in the case of *Thomas v Edmonton (City)*, 2016 ABCA 57.

32 The Board considered the letters and email correspondence of community residents and opponents which the Board received regarding the appeal and application. Much of the correspondence is in the style of a form letter or emails which for the most part contains the same or identical information or similar points of objections to the appeal. Much of the correspondence does not contain the address of the authors. Therefore, it is difficult for the Board to assess whether the writers are materially affected by the proposed development. Thus the Board places neither positive nor negative weight on the majority of these letters and email messages.

33 The Board also notes that over time the application has substantially changed. Initially the application was for providing assisted living units in the building that contained no kitchens. This caused great concern to the community associations and surrounding residents and businesses, which in the Board's opinion is understandable.

Charette Process

34 The community associations further referred to the charette process that has taken place regarding the subject parcel of land. The community associations and the property owners participated in this process. In the Board's opinion, the charette process is irrelevant for the review of the subject application and appeal. The charette process outlined more or less how the subject property could be developed in the future under the Land Use Bylaw and the applicable policies. In the Board's view, this is immaterial for the subject application as the charette was more focused on potential future development and potential uses on the subject parcel of land.

35 The appellant submitted that, as a result of the charette process and the input of the community participants, significant changes have been made to the application and proposed development. Examples include the mix of the units, the number of units, amenity space, modernizing the property, improvements to the outdoor space, and, as a result, it is now a mixed use development. Nevertheless, in the Board's opinion this is a factor to be considered for the determination of the appropriateness of the proposed development at the subject parcel.

36 In this case the property owners chose to make an application for the development as proposed, which is within their rights. Further, it is not up to a municipality, adjacent neighbours, or other stakeholders to decide which development permit applications and proposed development a property owner should make or pursue under the allowable

framework of the Land Use Bylaw and applicable planning policies. That is the prerogative of the property owner. The Board based its decision on the application which came before it, and not on what else could have been applied for instead.

Communications

37 The Board acknowledges that communications between the property owner and the nearby residents, businesses, and community associations has not been ideal, but notes that this history is not determinative for the review of the application.

38 The Board further notes that the DIC and applicant's communications about the proposed development with the community associations and affected parties were not the most effective way of communicating and engaging with affected parties or stakeholders, and the DIC should take some responsibility for that. This is also one of the reasons that, in the Board's view, the hearing was prolonged. The property owner in particular was hesitant to provide additional information about the operations of the proposed development. However, during the hearing the property owner and appellant/applicant provided a full explanation about the operations of the proposed development. Subsequently during the hearing they provided a detailed list of permit conditions it would be willing to accept should the application be approved by the Board. Since a hearing of the Board under the *Municipal Government Act* is a hearing de novo, the Board considered this evidence and places positive weight on this evidence in support of the application and appeal. On the other hand, during the hearing the opponents concentrated on reiterating their opposition to the proposed development, which the Board nonetheless considered as well.

39 The Board ultimately places no weight on the engagement process or communications because the application and proposed development is reviewed on its planning merits.

40 The Board does not take into account that in the previous application the proposed development initially contained significantly greater number of units and all units contained no kitchens. The Board notes that many of the comments of the opponents to the development are based on and/or directed against the initial application. The Board finds that the history of the previous application is irrelevant for the review of the subject development permit application before the Board and determination of the subject appeal.

Section 35 of the Land Use Bylaw

41 Pursuant to section 35 of the Land Use Bylaw, 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 lists the plans and policies affecting the parcel. Therefore, the policies of the MDP and other applicable policies must be taken into account. 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, vehicle and pedestrian circulation within the parcel, and sound planning principles, among other things, must be taken into account.

42 The Board notes that the proposed development is a discretionary use. Therefore, the development permit application can either be granted or refused on the basis of sound planning considerations.

MDP

43 The opponents referred to the MDP and argued that the proposed development does not meet the policies in the MDP. The representative of McKnight Plaza submitted that the MDP per section 2.4.2(d) would require a comprehensive redevelopment of the site as the site is more than one hectare in size (the site is 1.55 hectares). She stated that the objective of the MDP is intensification of development.

44 The Board report contains the report of the Planning Department of The City of Calgary (City Administration), which recommended to CPC that the application be approved. The City Administration's report DP2014-2780 is contained on pages 10 to 100 of the Board report. City Administration reviewed the application and concluded that the proposed development meets the MDP and other applicable policies, complies with the Land Use Bylaw, and requires no Bylaw relaxations.

45 Pursuant to section 687(3)(a.1) of the *Municipal Government Act*, RSA 2000, c M-26, as amended, the Board must comply with statutory plans in determining an appeal. The MDP is a statutory plan.

46 The Board considered the MDP in this decision. Statutory plans are policy documents that typically are general in nature and set out long term planning objectives as well as goals for future development. A statutory plan is a policy document rather than a regulatory document; it does not have the same status as a land use bylaw that prescribes detailed use rules and development standards for development and uses. In other words, a land use bylaw typically uses prescriptive, mandatory and/ or permissive language while a statutory plan typically contains policies and/ or guidelines for future development.

47 The MDP is a statutory document that is binding upon the Development Authority and the Board, and is a high level document which pertains to the whole City. This, in the Board's view, is underscored by the statement in section 1.7 of the MDP that "[t]he MDP provides a long-term strategy for the future growth of the city. It puts into place a plan and policies that will work towards achieving that strategy over time".

48 In addition, section 1.7 of the MDP stated that "[n]o representation is made herein that any particular site is suitable for a particular purpose as shown on maps or implied through policies of the MDP." Therefore, a certain degree of interpretation of statutory plans is necessary, including how policies and guidelines are applied in the review of a development permit application.

49 Section 638 of the *Municipal Government Act* provides that all statutory plans adopted by Council must be consistent with each other. Within the scheme of the Act it is implied that statutory plans, which are broader in scope, and a land use bylaw, which is prescriptive in nature, must also be consistent with each other. As Frederick A. Laux in *Planning Law and Practice in Alberta* (3rd ed., looseleaf), (Edmonton: Juriliber, 2002), in §5.6(1)(c) at page 5-12 states:

[...] the legislation contemplates that there must be reasonable harmony between plans, that plans have some binding force during decision-making for subdivision and development permit applications, that plans and a land use bylaw must be reasonable consistent and that the bylaw, in the main, follow the plans.

50 In the Board's observation and experience, however, it is not uncommon that there are sometimes inconsistencies between a statutory plan and a land use bylaw as the land use designations of land are tailored through a general land use designation District rather than tailored to an individual parcel of land as in a specific Direct Control District. In addition, a municipal development plan is an instrument that is intended as a broad statement of general objectives rather than one setting binding rules. Laux, in *Planning Law and Practice in Alberta* outlines in §5.6(3)(b) at pages 5-16/19 the relevant case law on this matter. From the applicable case law, Laux at page 5-19 concludes: "[consequently], unless there is "an absolute and direct collision"⁷⁰ between a plan and a zoning bylaw, the former, is to be read down to the latter."⁷¹

51 In this particular case, the Board notes there is an inconsistency between the MDP and the Land Use Bylaw as follows: Map 1, Urban Structure, of the MDP, lists the site as "Industrial – Employee Intensive", however under the Land Use Bylaw the parcel is designated C-COR2, which does allow residential uses (dwelling units and assisted living units) and commercial uses, as contemplated in the proposed development. Further, it is of significance that there is no Area Redevelopment Plan for the area, which would have provided more specific direction regarding redevelopment in this community. As a result, the means and degree to which land or parcels in this area are to be redeveloped is open to interpretation.

52 The City Administration report (page 20 of the Board report) lists as applicable sections of the MDP: sections 2.1.1 – Creating a city attractive to people; section 2.1.4 – Ensuring sustainable municipal finances; section 2.2.2 – A Transit supportive land use framework; 2.2.4 – Complete communities; section 2.2.5 – Strong residential neighbourhoods; 2.3.1 – Housing diversity and choice; and section 2.3.3 – Respect and enhance neighbourhood character and vitality.

53 The appellant and DIC further submitted that the proposed development would meet other MDP sections and policies, among other policies contained in sections 2.2.1, 2.3.2 and 2.6.5. The Board agrees that these sections contain policies that support the proposed development.

54 The MDP contains many policies, each of which do not stand on their own. They need to be read in consideration of the broader context of the MDP and in combination

with all other applicable policies contained in the MDP and having regard to the purpose and intent of section 2.4.2. In the Board's opinion, these MDP policies, despite some of its compulsory language, in and of themselves do not override the rules of the Land Use Bylaw in the event of a conflict.

55 The Board notes, however, that not all MDP policies are always in harmony with each other and, as explained above, need to be read in context of the overall objective of the MDP and with all the objectives of the policies contained therein. A proposed development will not necessarily comply with each separate policy. That is why each development is reviewed on its own merits and circumstances as is inherent to discretionary development permit applications such as the subject application.

56 Section 2.4.2, policy (d), states "In Developed Areas, require comprehensive plans when large sites (greater than 1.0 hectare in size) become available for redevelopment".

57 In this regard, the Board notes the following. The subject site contains two existing buildings and the purpose of the proposed development is to re-use the existing former hotel building for the proposed uses as indicated on the plans associated with the application. The entire parcel is 1.55 hectares in size, which for a large portion consists of parking area.

58 The appellant stated that the proposed development is not a redevelopment of the site as contemplated under policy (d) of section 2.4.2 of the MDP because, in their opinion, the development is only for a change of use, and the scope of the development is limited to certain portions of the site, which are delineated on the plans as the "scope area" of the project.

59 The opponents (McKnight Plaza, Benner Plumbing & Heating, and community and business associations et al.) take the view that the reference in MDP section 2.4.2(d) means that if part of a parcel is ready for redevelopment, the whole of the parcel must be comprehensively planned without regard to what else was previously approved. Counsel for Benner Plumbing & Heating, the owner of the property to the south, further argued that the application includes improvements and changes to the parcel outside of the scope area delineated on the plans. In counsel's opinion the whole parcel is therefore before the Board and the entire site should be considered by the Board.

60 Respectfully, the Board disagrees with the appellant's position. The term "redevelopment" is defined in Part 6, Glossary, of the MDP as "The creation of new units, uses or lots on previously developed land in existing communities." Since the subject site was previously developed, the Board notes that the section 2.4.2(d) of the MDP technically applies. The Board finds that the proposed development is more than a simple change of use. It is a "development" as defined in section 13(52) of the Land Use Bylaw and section 616(b) of the Act. In the Board's opinion the proposed development results in a change in the intensity of the use of the land and building. The changes in the use of the building necessitate many of the changes that are part of the development. Therefore, based on the definition "redevelopment" in the MDP glossary, the Board finds that the proposed development is a "redevelopment" as per the MDP.

Therefore, section 2.4.2(d) must be considered. Nevertheless, for the reasons articulated below nothing turns on this.

61 The Board notes that the applicant's plans contain a delineation of the project scope area. Changes are being proposed to reconfigure the parcel in terms of garbage location, landscaping, parking stalls, drive aisles, etc. Further, changes are also being made along the east property line where a green space will be added in a setback area as required by the Land Use Bylaw. Some of these changes are outside of the scope area. However, the Board notes that under the Bylaw there is no such thing as a "scope area". Having regard to the intent and purpose of the application and development, and based on the plans and evidence, the Board finds that entire parcel is the subject of the application and proposed development.

62 The Board, for the following reasons, disagrees with the opponents' and community associations' view that the MDP requires a comprehensive redevelopment plan for the entire site.

63 The opponents argued that, since the area of the parcel which has become available is greater than 1 hectare, the MDP requires the entire parcel to be comprehensively planned. The Board cannot accept this interpretation.

64 Section 2.4.2(d) states "In Developed Areas, require comprehensive plans when large sites become available for redevelopment". Implicitly, this statement is "In Developed Areas, require comprehensive plans for large sites when those large sites become available for redevelopment." The Board can see no other interpretation of this sentence: it would be absurd to find that comprehensive plans would be required for something other than the large sites which have become available for development.

65 The opponents may well be right that "site" means a whole parcel or an assembly of parcels and that part of a parcel cannot be comprehensively planned. In Part 6 of the MDP, "site" is used to mean a whole parcel. In particular, the definition of "mixed-use development", states "Mixed-use can occur vertically within a building, or horizontally on a site" [emphasis added]. If "site" meant part of a parcel where a particular use is happening, this definition would not have been phrased this way by the drafters of the MDP.

66 If the Board is incorrect, and "site" could also mean part of a parcel, there still must be consistency throughout section 2.4.2(d) of the MDP. If section 2.4.2(d) is triggered when part of a parcel is to be redeveloped, it is only the part that is subject to redevelopment which must be planned comprehensively.

67 Having regard to the objectives of the MDP, in the Board's view the subject section can be interpreted as either (a) It is the intent of the subject section to prohibit planning and development of part of a large parcel until the whole of that parcel can be redeveloped together, thus freezing large parcels (less likely in the Board's opinion), or (b) to require large areas of land that are being redeveloped to be comprehensively planned and developed as they become available, rather than planned and developed in isolation, on a piecemeal basis (more likely in the Board's opinion). The first

interpretation would likely result in sterilization of a parcel. For this reason, the Board evaluated the application in light of the entire site, not just the portion of the site that is within the scope area, as indicated on the appellant's plans. If the application involved changes to all of the buildings on the site, a comprehensive plan might be necessary, but the subject application does not provide for removal or substantive changes to all the buildings on the site.

68 Furthermore, in the Board's view the overall context of the MDP and the objectives of the MDP and its different policies need to be taken into account as well. Of particular note, the MDP identifies the need for affordable housing and inclusive housing as well as places value on reusing existing buildings.

69 Based on a purposive and contextual interpretation of the MDP and the plain and ordinary wording of the aforementioned MDP section, the Board finds the stronger interpretation of the subject section is that Council did not intend that it would prohibit a proposal for redevelopment for a portion of a site, such as the DIC's current application.

70 Moreover, the parcel is evaluated and planned as a whole, respecting what was approved previously and leaving intact the parts of the previously issued development permit that are not subject to the change of use application.

71 In the case of *T. Sun Holdings Ltd. v Calgary (City)*, 2012 ABCA 320, the Court held that when a development permit application is made for a partial use of a building on a parcel, the previously approved development and uses do not trigger the reconsideration of previous permits. While the Court decision focuses on "use area", it flows from this decision that previous development approvals and permits must be respected for a multi-use building or parcels (with multiple buildings or uses).

72 In any event, the Board, based on the evidence, finds that the entire site has not become available for redevelopment. The other single storey commercial building on the site, located immediately to the south of the former hotel building, is rented out for other uses by the property owner. A previous development permit applies to that building, and no changes to the uses in that building are proposed in this application. Therefore, the entire site has not become available for redevelopment.

73 The Board further finds that with the modifications to the proposed development required by the Board (removal of the "scope area") the portion of the site that has become available is comprehensively planned.

74 The opponents stated that the surrounding communities are on the tipping point of poverty. In this regard the representative of the Highland Park Community Association stated that the proposed development would contribute to neighbourhood decline and presented information from a number of articles, academic papers, policy documents and census data about the factors that define a neighbourhood in decline. In their opinion, the proposed development would result in an overabundance of affordable housing and additional low-income people in the neighbourhood and that allowing a 100 percent low-income project to go into the neighbourhood would violate the City of

Calgary planning principles, including the policies contained in the MDP regarding affordable housing and regarding special care facilities.

75 While the Board appreciates the efforts of the community associations in articulating their concerns regarding the development, the Board notes that the community associations' evidence and arguments about affordable housing and the type of potential residents in relation to the proposed development are speculative in nature. No expert witnesses were called to substantiate the evidence in this regard. No corroborating evidence was provided. Therefore, it is difficult for the Board to place weight on this evidence and these arguments. Consequently, the Board finds there is little or no evidence to suggest that the proposed development in and of itself will cause the community to decline into poverty, or that it violates the City of Calgary's planning policies in this regard.

76 Council expressly designated the land C-COR2 under the Land Use Bylaw, which, among other things, allows residential development in the form of dwelling units and assisted living units on the parcel. Having regard to section 617 of the *Municipal Government Act*, Council through the Land Use Bylaw and plans apparently thus provided for a means to allow for residential development on the subject site in order to achieve economical and beneficial development and use of the subject lands necessary for the overall greater public interest.

77 Even if one accepts that the proposed development would not meet some of the policies in the MDP, the Board finds that those MDP policies are directive and not mandatory or regulatory as they do not use imperative language. The MDP, in the applicable sections, does not use compulsory words like "shall" or "must" but uses the words "should" and/or "encourage", which in the Board's view indicates that the referenced policies are directive rather than mandatory or regulatory.

78 While the MDP contains policies with respect to affordable housing, the Land Use Bylaw does not regulate this as a separate use. It is part of the residential use category.

79 The Board finds that the proposed development contributes to providing diversity of housing stock as envisioned by the MDP, sections 2.2.4 and 2.3.1.

80 Further the MDP, section 2.6.5, encourages the conversion and re-use of existing buildings. In the Board's opinion, the proposed development exactly achieves that objective.

81 To some degree Edmonton Trail isolates the proposed development from the residential community of Greenview, and the development is buffered from the industrial area to the east by Nose Creek. Together with the commercial uses of the McKnight Plaza, the Benner building and the other buildings on the site, it is part of and integrated with the community of Greenview Industrial Park from a planning perspective, and to a lesser extent with the residential community to the west by virtue of sharing a common roadway and local services. It has access to good transit connections, green spaces and pathways, and community facilities are within walking

distance. In the Board's view, it is part of a complete community as envisioned by the MDP.

82 Regarding the other aforementioned policies of the MDP, the Board, in weighing all of the evidence and relevant factors, agrees with the analysis and review of the City Administration and finds that overall the proposed development meets the applicable policies of the MDP.

83 Therefore, the Board finds the arguments of the opponents regarding the MDP not persuasive.

Planning Principles for Location of Care Facilities and Shelters (2011)

84 The Board notes that the "Planning Principles for Location of Care Facilities and Shelters (2011)" is a policy document which does not have the same status as a statutory plan like the MDP. It may be applied by the Development Authority and the Board, upon appeal, and it is a relevant consideration but it is not binding in the way a statutory plan would be.

Proliferation of Care Facilities

85 The community associations pointed out that in their opinion there are too many special care facilities in their neighbourhoods and that the proposed development should require a cumulative impact assessment.

86 The community associations submitted that several special care facilities are located in the surrounding neighbourhoods. However, the Development Authority's representatives advised that there is no record of approved facilities as referenced by the community associations. Apparently, in this regard, the community associations considered residential properties where some form of residential care is offered as a care facility. The Board notes that under the Land Use Bylaw, section 277, where care provided is for less than five persons at a residential property, it is not considered a "Residential Care" use, and those places, in compliance with the Bylaw, would not require a development permit. Such residences exist throughout the city and thus are not taken into account by the "Planning Principles for Location of Care Facilities and Shelters (2011)". The Board concludes that Council determined that facilities with care for less than five persons are not regulated by the Land Use Bylaw and thus, from a planning perspective, are deemed to be appropriate in a residential community. Therefore, the Board places no determinative weight of the community associations' argument and evidence in this regard. Further, the Board is not satisfied that, from a planning perspective, the referenced developments (i.e. facilities with care for less than five persons), in combination with the proposed development, are likely to have a negative impact on the nearby communities.

87 The Board, based on the evidence or lack thereof, finds there is no proliferation of similar care facilities in the area which from a planning perspective could be problematic due to having too many care facilities located in the area. The Board notes that The City

of Calgary "Planning Principles for Location of Care Facilities and Shelters (2011)" uses a distance of 300 metres to an existing care facility to assess any cumulative impacts of facilities on the character of the surrounding neighbourhood and on public safety and police services.

88 According to City Administration, based on a review of development permits issued by the Development Authority (as listed in the Planning Department's so-called Posse System), the closest care facility or shelter is located 446 metres from the proposed development. The Board finds that is a significant distance.

89 Many of the care facilities mentioned by the community associations are located at major distances from the proposed development. Some are over a kilometre away. Further, in terms of use, the proposed development is dissimilar to the other care facilities. The community associations have not sufficiently demonstrated to the Board's satisfaction that from a planning perspective there is a direct negative cumulative impact resulting from the addition of the proposed assisted living development to the community.

90 The City Administration report (Appendix V of the CPC report) on pages 79 to 83 of the Board report contains a detailed analysis of the application in relation to the applicable location criteria of the City's "Planning Principles for the Location of Care Facilities and Shelters (2011)". The Board reviewed the location criteria and agrees with the Administration's assessment of the application in this regard. The Board accepts this evidence for the purpose of this appeal and application. The Board, based on the evidence, finds that the proposed development meets all location criteria of the "Planning Principles for the Location of Care Facilities and Shelters (2011)" as approved by Council.

Operational Plan

91 The community associations and opponents stated that the DIC has no operational plan for the operations of the development and their building on the site. In this regard the Board notes that under the Land Use Bylaw an operational plan is not a condition precedent to the issuance of a development permit. Under the scheme of the Act and a land use bylaw, a development permit cannot regulate the business operations of a development or a use. Nonetheless, the DIC did provide insight as to how it intends to operate the building with the mix of dwelling units, assisted living units and commercial uses. The Board report does contain the DIC's information in this regard. The DIC is willing to enter into a so-called "Good Neighbour Agreement", although this is not a legally binding agreement in relation to a development permit. The Board report contains the draft-agreement the DIC proposed. In the Board's opinion, this document gives detailed background information as to how the building is to be operated by the DIC.

92 The Board finds that a "Good Neighbour Agreement" would be an appropriate step, but the Board is not prepared to impose such an agreement as a condition on

development. The Board does not make any findings about whether such an agreement would be legally binding, and this is not determinative for the outcome of this appeal.

93 In its submissions and at the hearing, the DIC provided extensive evidence about the proposed operations of the building. It also advised that, other than its shelter in the downtown area, it operates at least two other facilities in the city that have dwelling units and assisted living units. At the hearing, the DIC submitted a draft operational plan that provides details of the operations of the building. It outlines and gives parameters for: (a) The purpose of the building and property; (b) Maintenance of grounds and facilities; (c) Renovation priority, (d) Facility operations/staffing; (e) Waste and recycling; (f) Rental mix; (g) Tenure; (h) Tenant profile; (i) Tenancy parameters for tenants receiving supports/services; (j) Calgary Homeless Foundation policies and practices; (k) Safety Codes Council standards; (l) Communication and records; and (m) Operational plan updates.

94 The operational plan outlines the purposes of the building and property, which include: (a) To provide a mixed use ("Assisted Living", "Dwelling Unit" land uses), mixed market (non-market and market rent) residential apartment with commercial space ("Consumer and Retail Service" land use) on the ground floor; (b) Provide all residential tenants a safe and positive living environment and the opportunity to live independently; (c) Provide a mix of market and non-market residential rentals; (d) Provide residents of suites designated "Assisted Living" under The City of Calgary Land Use Bylaw access to on-site assisted living services and facilities; (e) Provide quality commercial spaces to attract and maintain a diverse mix of quality tenants; (f) Provide easily accessible quality outdoor spaces; and (g) Foster neighbourly and constructive relations amongst tenants, staff and neighbours. At the hearing the appellant explained in detail the operations of the project. The Board places positive weight on this evidence. Therefore, the Board finds it cannot be said that the DIC has no operational plan for the building.

95 The Board notes that under the scheme of the *Municipal Government Act* and a land use bylaw, and its operations, a development permit cannot regulate the day to day operation of a development unless there is some planning impact of the development that requires to be regulated.

96 The Board notes that in this case the DIC did not make an application for a shelter at the subject property. In any event, the Land Use Bylaw does not allow such use in the subject building or on the parcel.

97 In fact the application is a for a mixed use apartment-style building with retail uses on the main floor and residential uses in the form of assisted living units and dwelling units on the upper floor. This building configuration is in keeping with section 796 of the Land Use Bylaw, which contains the purpose statement of the C-COR2 District, the land use district that governs the parcel.

98 Further, the DIC submitted that it would be willing to accept a specific condition in the development permit which would prohibit the use of a shelter on the property.

Therefore, in the Board's view the opponents' fear that the facility would be used as a shelter in the future is unfounded.

99 In addition, under the Act and the Land Use Bylaw the Development Authority has the ability to take enforcement action if the property owner, developer or operator of the site violates the conditions of the permit or uses the building and land in contravention of the Bylaw.

100 As stated above, in determining an appeal the Board cannot base its decision on innuendo, fear, and lack of trust between the parties.

101 Irrespective of whether the proposed development is affordable housing or not, from a planning perspective, inclusiveness of such housing in neighbourhood settings prevails over fear about how such a development would be operated in the future.

102 If the development would be approved, the community association of Highland Park in particular requested conditions to be imposed in the permit. However, the Board notes that many of their suggested permit conditions would be contrary to the Act and the Land Use Bylaw, and therefore legally would not be allowed and not be appropriate. Conditions to be imposed by the Development Authority and, upon appeal, by the Board on a development permit must be in accordance with the Act and the Land Use Bylaw, must achieve planning objectives, and, according to Laux, must not be exercised in bad faith or be patently unreasonable, discriminatory, retroactive in effect, or vague and uncertain (Laux, *ibid.*, page 9-24). In the Board's view, detailed conditions regulating the operations of the development as requested by the community association would be inappropriate and serve no legitimate planning purpose.

103 The Board wishes to point out that legally a development permit runs with the land and future successive property owners are therefore bound by the permit. Consequently, the community associations' concern that a subsequent property owner would not be bound by the conditions of the permit is unfounded.

104 Some conditions suggested by the community association would result in fettering discretion which is contrary to the scheme of the Act and Land Use Bylaw. Other suggested conditions pertain to Building Code or occupational issues. Neither the Development Authority nor the Board has jurisdiction in this regard. This falls under the *Safety Codes Act*, RSA 2000, c S-1.

105 The Board considered the conditions that the appellant would be willing to accept if the Board were to approve the proposed development.

Neighbourhood Decline

106 The opponents stated that the surrounding communities are on the tipping point of poverty. In this regard, Ms. Naumann, the representative of the Highland Park Community Association, stated that the proposed development would result in neighbourhood decline and presented information from a number of articles, academic

papers, policy documents, and census data about the factors that define a neighbourhood in decline. She stated that Highland Park was identified by The City of Calgary as one of eight at-risk communities in 2010 and detailed the research by which this assessment was made, including data about: the concentration of poverty, the percentage of vacant and abandoned properties, disinvestment in homes and businesses, the number of businesses and homes requiring major repair, the concentration of businesses serving the underprivileged, and the decline of public education. In her opinion the proposed development would result in an overabundance of affordable housing and additional low-income people in the neighbourhood and that allowing a 100 percent low-income project to go into the neighbourhood would violate the City of Calgary planning principles.

107 The Board appreciates the efforts of the community associations in this respect; nevertheless, the Board notes that the Highland Park Community Association's evidence and arguments about neighbourhoods in decline, poverty levels and affordable housing in relation to the proposed development are speculative in nature. Some of the research papers are based on research data from the United States. It is well accepted that between the U.S. and Canada there are different social support levels and/or services in place. No expert witnesses were called to substantiate their evidence in this regard. No other corroborating reliable evidence was provided. The opponents' evidence in this regard is very much socio-economic in nature and less based on planning rationale or sound planning considerations. To a large extent, the affordable housing arguments are philosophical, socio-economic and sociological, and it is questionable how they would be directly relevant to sound planning considerations. Therefore, it is difficult to place weight on the evidence and arguments provided.

108 The opponents referenced research papers which mention 40 per cent as a tipping point in the community in terms of poverty levels among community residents. The Board notes that, based on City data (from The City of Calgary Community & Neighborhood Services Social Science Research Unit), the low income levels of households in Greenview is at about 22 per cent, which is to be considered "Moderate Poverty" as compared to the Canadian national average standard. Highland Park is at 29 per cent while Thorncliffe is at 19.5 per cent. The Board finds it significant there are many other communities in the city that are at a similar level. The coloured maps that Ms. Naumann presented indicate that. In addition, the research data from 2006 is almost ten years old. Further, the "Threshold for Locating Affordable Housing Applying the Literature to the Local Context" report of The City of Calgary (which was submitted by Ms. Naumann during the hearing) points out that one must take into account the size of a community in terms of population. Some of the most vulnerable communities have a low number of residents yet have relatively high proportion of those residents with low incomes. In the Board's view, this indicates that there are many factors to be taken into account when extrapolating conclusions from this data.

109 The Board acknowledges that, according to the City data, Highland Park is a vulnerable community in terms of poverty levels; however, the Board notes that the proposed development is not in the community of Highland Park.

110 The addition of 79 units in a community of 2,765 people is an increase of 2.86 per cent (based on the 2001 Canada Census) and an increase of 3.92 per cent on a 2,013 population (based on 2006 Census) – assuming one resident in each unit. In the Board's opinion, this is a minor increase. If one were to accept Ms. Naumann's evidence and arguments this would mean that no affordable housing developments could ever be located in many communities throughout the city. That would be contrary to The City of Calgary's and MDP's objective of integrating different housing styles and densities across the city. The Board finds that the research referenced is only marginally relevant. Planning considerations involve more factors and circumstances than solely the income levels of residents. The overall greater public interest in locating affordable housing projects is also a factor.

111 The DIC's operational plan indicates that the assisted living units are subsidized based on the income of the resident and include a number of resources tailored to the needs of each resident. In the Board's view, this is counter to the opponents' statement that low-income people would be "dumped" into the neighbourhood without sufficient supports. Further, the research referenced by the community association states that neighbourhoods with high levels of poverty require certain supports to prevent things from getting worse. But that research did not look at neighbourhoods with high levels of poverty and high levels of support versus high levels of poverty and little to no forms of support. The DIC's operational plan includes supports for residents such as financial support in terms of a rent subsidy and social, medical and therapeutic supports. These supports are above and beyond the Canadian social safety net available to all.

112 There is a need for the use and purpose of the proposed development and the services that will be provided in the building. The proposed development provides much needed affordable housing stock in furtherance of transitioning people out of homelessness as demonstrated by the DIC's Executive Director who provided testimonial evidence at the hearing.

113 The Board notes that the opponents' expressed concerns appeared to be largely based on preconceived ideas about the type of person who would live in the proposed development.

114 The appellant submitted that the aforementioned issues raised by the community association are social issues that are irrelevant and are not based on sound planning considerations. The Board agrees with this position and places no weight on irrelevant evidence.

115 The appellant correctly pointed out that a development permit cannot regulate the users but only the use. A development permit cannot regulate the number of users in a unit nor can it regulate the day to day operations of a use, unless there is a legitimate planning objective that would require conditioning of a certain aspect of a use.

116 The Board notes that the Land Use Bylaw does not distinguish between types of residential dwelling units, be they affordable housing units, rental properties, or any other kind of housing unit. The background, income level, age, gender, religion,

ethnicity, and lifestyle, etc. of the residents of dwelling units and/or assisted living units of a development is not relevant for the purpose of the Land Use Bylaw.

117 The Board finds it significant that the size of the development of 79 units is less intense than what is allowed under the Land Use Bylaw for developments on the site. In terms of size and scale the proposed development is compatible with the surrounding neighbourhood. The existing building is not changing; the footprint and height remain essentially the same.

118 The appellant correctly pointed out that under the Land Use Bylaw, the use of "Assisted Living" is considered a type of residential use, as indicated in Schedule A to the Bylaw. The Board notes the Land Use Bylaw defines "Assisted Living" as a specific use. However, this term means something else to popular culture. The term is not defined by the Province, but in general refers to senior care facilities. This may create confusion and as a result the public has different perceptions about the proposed development. Nonetheless, the use definitions as contained in the Bylaw are determinative for the Development Authority's and Board's review of the subject application.

119 In addition, the Board notes that the development, as applied for, did not require any relaxations of the Land Use Bylaw.

Mix of Units

120 The opponents expressed concern about the mix of dwelling units and assisted living units in the building, the size and location of the units, and the availability of support services offered by the DIC to the residents. The appellant stated that the number of one and two bedroom units was arrived at to meet the conditions of the provincial grant for their project.

121 The Board notes that the provincial grant is irrelevant for the proposed development, as this is not a planning consideration. The financing and cost of a development is immaterial. Whether the units contain one or two bedrooms is from a planning perspective not determinative either. A two-bedroom unit would provide the ability to accommodate more residents in the building. The appellant stated that it would allow families with children to reside in a two bedroom unit. The Board accepts this evidence. The Board, based on the evidence, finds there is no negative impact itself from the proposed configuration of dwelling units.

122 Regarding the mix of dwelling units versus assisted living units in the building, the Board notes that this is mainly driven by the funding model of the DIC for the proposed development. In the Board's view, from a planning perspective nothing turns on the mix of units. Under the Land Use Bylaw the main differences between these uses is the required level of support that is offered by the DIC to the residents of the assisted living units in the building and the number of associated facilities provided for this use in the building. That is a requirement of the use definition as contained in section 146 of the Bylaw.

123 On questioning from the Board, the Thorncliffe/Greenview Community Association stated that they would not be against making all units in the building assisted living units which would give more control over the users, however, they questioned the model the DIC is going to use to operate the building. In the Board's view, from a planning perspective, the pertinent issue is the planning impact of the project or proposed development on the surrounding properties and not the mix of the units themselves. The operational plan is helpful to assess the impact but is not the ultimate determining factor for the review of the application.

124 In terms of market rent or non-market rent for the units, the Board finds this is immaterial from a planning perspective. The Land Use Bylaw does not regulate the tenancy or ownership of dwelling units or assisted living units.

125 Irrespective of the mix of the units and the type of units, the Board finds that the assisted living units and the dwelling units are clearly residential in use and nature, with all the typical characteristics of a residential use.

126 The appellant stated that the DIC has an extensive screening process for the selection of the residents of the units. The appellant provided evidence that the DIC's intention is to accommodate those who are coming out of homelessness, who do not need the services provided by emergency shelters, and who would benefit from some limited support while living independently. The assisted living unit residents will be required to sign a supported living agreement. There will be oversight and case management by a supported living coordinator for these residents. The Board accepts this evidence. The Board places pivotal weight on this evidence. The availability of a supported living coordinator is key, and the Board accordingly imposes a condition that such a person is available.

127 The opponents expressed concern that the DIC would not provide sufficient support services to the residents of the units. The DIC provided evidence that such support services would be available, as set out above. The provision of support services is part of the use definition of "assisted living" in the Land Use Bylaw, and the Board is satisfied that the development as described is consistent with that definition.

128 The appellant offered to accept a condition in the permit that would cap the maximum number of residents in the assisted living and dwelling units. In the Board's view, such a condition is inappropriate.

129 The opponents also expressed concerns about the availability of amenity space in and outside the building for the residents. In the Board's view, this is a relevant planning consideration.

130 At the hearing the appellant offered to provide additional amenity space on the main floor by reducing the size of the commercial uses on the main floor (by eliminating the northerly commercial bay). However, this would require a relaxation of section 804(1) of the Land Use Bylaw which requires that a minimum of 20.0 per cent of the gross floor area of the building must contain commercial uses. Further, the appellant

offered to add amenity space outside the building on the west and east side. At the hearing the appellant provided amended plans to this effect.

131 While the proposed change to add amenity space to the main floor requires a Bylaw relaxation, the Board finds this an improvement. This also reduces any potential impact on or conflicts with the uses of McKnight Plaza as it reduces the parking demand on the north side of the building. Further, it would provide more amenity space for the residents of the building.

132 The Board, based on the evidence, finds that this relaxation and the resulting development would not materially impact the neighbourhood amenities or detract from the use, enjoyment or value of neighbouring properties.

133 The community associations asserted that the DIC has no experience with leasing of commercial spaces. At the hearing Mr. Facey of the DIC stated that the DIC owns several mixed use buildings with commercial units; he manages their commercial units and in 15 years he has had no vacancies. The Board accepts the DIC's evidence in this regard. In the Board's view, however, this is less material since the proposed commercial use in the building, the "Retail and Consumer Services" use, is a permitted use in the C-COR2 District that governs the parcel. This proposed commercial use in itself does not require any relaxations of the Land Use Bylaw. Most importantly, the previous experience of an applicant in operating a particular type of activity is not a relevant planning consideration.

McKnight Plaza Issues

134 The owner of McKnight Plaza is mostly concerned about the loss of access and parking for the visitors/users of the commercial uses in their building. McKnight Plaza submitted that the proposed development would take away parking on the north side of the former hotel building. McKnight Plaza was approved under a comprehensive development permit (DP89-3215). It was granted a relaxation of 31 or 50 per of the Land Use Bylaw in effect at the time (Bylaw 2P80). That parcel was subdivided off from the parcel that is the subject of the proposed development. The representative of the owner of McKnight Plaza mentioned that either 32 or 33 parking stalls were available on the subject parcel under a mutual Parking and Access Agreement between the two parcels. Further, they are concerned that their access will be limited in the future if McKnight Boulevard is widened by the City of Calgary as their current right in/right out access on McKnight Boulevard is in the City's road right-of-way.

135 The McKnight Plaza owner is also concerned about the size and relocation of the proposed waste and recycling facility. The users/tenants of McKnight Plaza currently use the garbage facilities that are located on the subject parcel which dates back to the subdivision of the parcel. There is no agreement in place for this. It is not mentioned in the Parking and Access Agreement between the adjoining properties. In their opinion, the proposed waste and recycling facility would be too small to handle all waste from the users of McKnight Plaza and the new location would reduce available parking.

136 The Board notes that the aforementioned Parking and Access Agreement is a reciprocal agreement which is on Title of both properties as a caveat/restrictive covenant. It allows shared parking for the users of the northerly parcel and of the subject parcel and vice versa anywhere in the available stalls on either of the parcels. The agreement does not dictate a maximum number of shared parking stalls, specific location or stalls, or designated stalls for specific uses. There is no entitlement for the users/tenants of McKnight Plaza to have exclusive use of the northerly parking stalls on the site, to the exclusion of the uses on the subject site. In addition, the Board notes that, according to the conditions of the Agreement, it cannot be discharged from Title by both or either parties or their successors, without “the written approval of the Director of Transportation for the City of Calgary and only in accordance with the Planning Act of Alberta” [emphasis in original]. The City Administration report (page 23 of the Board report) further states that the mentioned agreement would remain on Title if the subject parcel were to be subdivided in the future. In the Board’s view, this sufficiently addresses some of the main concerns of the owner of McKnight Plaza. The proposed development therefore does not affect the owner of McKnight Plaza and its tenants and their customers’ right to park on the subject site.

137 The Board notes that the previous land use bylaw (Land Use Bylaw 2P80) did allow for off-site parking provided under an agreement between property owners that such stalls would be available for other developments. The current Land Use Bylaw does not provide for those arrangements. Further, it is of significance that the current Land Use Bylaw has different and lower parking stall requirements for commercial uses than Bylaw 2P80. In addition, as the appellant astutely pointed out, the uses of the proposed development (the dwelling units, assisted living units and the proposed retail uses in the building) will have a significantly lower parking demand and Bylaw parking requirement than the previous hotel use. The previous hotel use originally required 403 stalls. According to the appellant there is a reduction of 285 stalls in required parking under the Land Use Bylaw for the entire subject parcel. The Board accepts this evidence and places weight on it.

138 The Board also finds it pertinent that the Development Authority’s representatives stated that while Land Use Bylaw 1P2007 does not allow off-site parking, existing sites and developments that are short on parking will be reviewed on their own merits and typically existing Bylaw relaxations are recognized and taken into account when a new application for development on these sites is made.

139 As stated above with respect to the scope area, the Board finds that the whole parcel is the subject of the application and proposed development and thus the entire parcel is to be considered. Therefore, the parking available on the entire parcel should be taken into account when reviewing the subject development.

140 Parking and access is a planning consideration and thus the Parking and Access agreement and the mutual shared parking can be considered in this case in relation to the proposed development. While the Board agrees that the agreement to some extent is poorly worded and better wording would be preferable, in the Board’s opinion this is a civil issue between adjoining property owners. It is up to the parties to come to a new

agreement if they so choose. The Board finds it is significant that the previous development permit does acknowledge the Parking and Access Agreement and is registered on Title. In the Board's view, this provides the owners and users of McKnight Plaza sufficient assurances that parking and access would be available to their users/visitors on a continuing basis in the future. In addition, the Board is of the opinion that it can be acknowledged appropriately in a condition in the permit.

141 Furthermore, the proposed development provides sufficient parking in accordance with the Land Use Bylaw. The appellant stated that the proposed development has a surplus of 51 parking stalls when the whole site is considered. The Board, based on the evidence, finds that no Bylaw relaxations are required for parking. The City's Administration's report to CPC confirms this (page 22 of the Board report). At the hearing the Development Authority's representatives submitted an updated bylaw check of the parking required under the Land Use Bylaw. The total parking stalls required are 138 for all uses on the site (both proposed development/uses and existing uses), while 60 stalls are required for the car rental business; thus a total of 198 stalls is required. The proposed development provides 250 stalls on the entire parcel. Therefore, the Board finds that site has a surplus of 52 stalls. While a minor number of stalls do not meet the dimensions required by the current Bylaw, those stalls were approved under the previous Land Use Bylaw and there is no evidence that they are not functional.

142 Further, in the Board's view, the elimination of the retail space on the main floor as offered by the appellant would be an improvement as it will reduce the parking demand on the north side of the building. This would be to the benefit of the users and tenants of McKnight Plaza.

143 Regarding the impact of the proposed development on the access to the adjacent parcel to the north (McKnight Plaza), the Board provides the following. The Development Authority's representatives stated that there are no immediate plans to widen McKnight Boulevard. As a result, the Board notes that the proposed development would not cause the McKnight Plaza parcel to become landlocked. However, the Board also notes that the McKnight Plaza tenants and patrons have access to and from Edmonton Trail via the subject property in accordance with the existing Parking and Access Agreement on Title. While there are some changes to the site configuration, the proposed development does not limit access to McKnight Plaza from Edmonton Trail. As stated above, this can be acknowledged appropriately in a condition in the permit.

144 Regarding the impact of the proposed parking reconfiguration on the adjacent parcel to the north (McKnight Plaza) the Board provides the following. With the entire site taken into account, the Board concludes there is a surplus of parking. While there are some disagreements about how many stalls are lost, the Board finds this immaterial given the large numbers of parking stalls available on the parcel. Even after the implementation of the proposed development there is an appropriate surplus that can be utilized by the users of both adjoining properties in accordance with the existing Parking and Access Agreement. The Board agrees with the Development Authority's representatives that if a condition is imposed requiring that the agreement, caveat and

restrictive covenants remain on Title of both properties, the provided parking would remain available in accordance with the agreements.

145 The Board further notes that the concerns of McKnight Plaza respecting the loss of parking stalls on the north side of the subject site can be further addressed through a condition directing that staff parking is to be provided on the south side of the site.

146 The Board, based on the evidence and aforementioned factors, thus finds that there are sufficient surplus parking stalls on the subject parcel available to accommodate the parking demand of the users of McKnight Plaza in addition to the users of the proposed development. With the imposition of conditions in the permit as stated above, the proposed development in terms of parking would, in the Board's opinion, not negatively affect McKnight Plaza and its users/tenants/customers.

147 With respect to waste and recycling facilities, the appellant submitted that the relocation of the facilities is a more convenient and appropriate location based on accessibility and the sweeping path for the garbage trucks that pick up the waste. The appellant stated that they will use private waste pick-up operators and they will pick up the waste as frequently as needed. At the hearing Mr. Wong of The City of Calgary Development Engineering Department stated that, in terms of most of the commercial sites in the city, waste collection is done by private pick-up operators and that the City has moved towards new guidelines in terms of waste management. The onus is on the site operator to ensure that waste is managed and taken off site. He stated that, in his opinion, the proposed three waste bins for the development would be sufficient in terms of the needs of both sites. The Board accepts this evidence.

148 The appellant further stated that separate recycling will be provided in the building for the residents of the units. The appellant also stated that it would be willing to make the waste facilities available for the users of McKnight Plaza on commercially reasonable terms. The Board accepts this evidence.

149 In the Board's view, the proposed waste and recycling facility is appropriate from a planning perspective. However, the Board finds it necessary to impose a condition in the permit that this facility must be made available to the users of McKnight Plaza on reasonable terms.

150 Furthermore, having regard to the reconfiguration of the site, the Board finds that access to McKnight Plaza is not impeded by the proposed development.

151 With respect to the pylon sign owned by the DIC that is located on the McKnight Plaza property, the Board finds it is not necessary to deal with that issue. This is a civil issue between two adjoining property owners. The Board has no jurisdiction to deal with this matter.

Benner Site Issues

152 The owner of the adjoining parcel to the south, the Benner site, is concerned about preserving the environmental reserve/ green space along Nose Creek to the east and south of the subject site, as well as the green space located to the south of the Benner site. He is also concerned about people from the subject site loitering in the aforementioned green spaces. The Board agrees with the owner of the Benner site that it is appropriate for the easterly fence to be extended south to the Benner building. From a planning perspective, this would be appropriate so as to prohibit access to the Benner site from the proposed development.

Other Issues

153 One member of CPC commented on the proximity of the development to Nose Creek and stated that the interface with the Creek would make this a dangerous place for vulnerable people. This is an opinion without substantiating evidence. The Board notes that there are many creeks, rivers and lakes in the city that have adjacent residential developments. From a safety perspective and a planning perspective, there is no evidence of inherent danger associated with that.

154 The Board further notes that the proposed development provides for a 1.8 metre high fence along the entire property line adjacent to Nose Creek. Therefore, access from the site to Nose Creek is physically restricted. The representative of the business association mentioned that the water level in the creek for most of the year is low. Therefore, the Board determines there is no concern in this regard.

155 In addition, the Board finds that there is no evidence to conclude that the proposed development materially affects the property values of the adjacent properties or of the properties in the nearby neighbourhoods or industrial area.

156 The Board also notes that the location of the proposed development is well served by public transit. The Board notes that a new LRT line is planned along Centre Street which is reasonable walking distance from the site. Although this line is many years away from being established, from a planning perspective it is a relevant factor.

157 The proposed development, in terms of planning impact, is akin to a mixed use residential apartment building with commercial and retail uses on the main floor. The proposed development is buffered from the commercial/industrial uses to the east by Nose Creek.

158 In the Board's opinion, the location of the proposed development is an appropriate transition between the surrounding residential developments to the west of Edmonton Trail and the commercial/industrial uses to the east, north, and south. In this regard, the proposed development is, in the Board's view, compatible with the adjacent developments and uses.

159 Regarding the building, the opponents questioned whether the building would be brought up to Building Code standards. The Board notes that this is outside of the purview of the Board and the Development Authority. This falls under the Alberta *Safety*

Codes Act. Nevertheless, the Board finds it appropriate to require a condition in the permit that ensures that improvements be made to the exterior of the building façades on all sides. The building shall be painted in a visually appealing colour scheme and one which minimizes the visual impact of the roof top mechanical room.

160 There is no evidence that the existing proposed liquor store in the other building on the site would be detrimental to the proposed development as alleged by some of the opponents. The extensive support arrangements that the DIC provides to the residents in the building could appropriately deal with any potential social issues or impacts that arise. The same applies to the allegation that the location of a payday loan business in the McKnight Plaza would be problematic. Proximity does not in and of itself mean that the proposed development would be incompatible with the adjacent development from a planning perspective. This is not uncommon in mixed use developments with residential components that are located near or in commercial areas in the city. Further, the Board finds there insufficient evidence to conclude that the proximity of the adjacent liquor store and payday loan business would be detrimental to the welfare of potential residents.

161 The Board also notes that the DIC is the landlord and thus has ownership control over the lease and the building that houses the liquor store.

162 Some opponents expressed concerns about the landscaping. In the opinion of some residents who live across Edmonton Trail the landscaping should be extended along the entire length of Edmonton Trail. The Board notes that at the hearing the appellant submitted amended plans that added amenity space and some additional landscaping to the site. However, along the south portion of the parcel by Edmonton Trail no landscaping improvements were provided. In the Board's view, it is appropriate to extend the landscaping to the south along the entire property line adjacent to Edmonton Trail. This would enhance the overall appearance of the parcel and proposed development and have a positive impact on the community and nearby residents.

Proposed Changes to the Plans

163 The Board considered the modifications to the development that the appellant presented at the hearing. In the Board's opinion, the modifications are significant improvements to the development. The amended plans, among other changes, provide for additional amenity space on the main floor by reducing the size of the commercial uses on the main floor (by eliminating the northerly commercial bay). As stated above, this requires a relaxation of section 804(1) of the Land Use Bylaw which requires that a minimum of 20.0 per cent of the gross floor area of the building must contain commercial uses.

164 The Board finds that this relaxation has no negative impact on the adjacent properties or the community. As stated above, this is a positive improvement to the development. From a planning perspective, this relaxation meets the criteria of section 687(3)(d) of the *Municipal Government Act* and thus is appropriate.

165 The Board notes that the appellant argued that moving the amenity space to the main floor also involves a relaxation of section 804(3) of the Land Use Bylaw. Since this amenity space is available to the dwelling units as well as the assisted living space, the Board is not satisfied that this would be a relaxation. However, if there is a relaxation, the Board finds that this relaxation and the resulting development would not materially impact the neighbourhood amenities or detract from the use, enjoyment or value of neighbouring properties. Thus, it would be an appropriate relaxation that meets the criteria of section 687(3)(d) of the Act.

166 The Board agrees with the owner of McKnight Plaza that the existing access point/entrance located on the north side of the main floor of the building, labelled as "Commercial Entry" on Slide 12 of the plans dated April 12, 2016, should remain as per the current configuration.

Board's Final Findings

167 From all the evidence presented, the Board concludes that the surrounding community associations, affected neighbours, residents, and businesses were insufficiently able to demonstrate how the proposed development would negatively impact the adjacent properties, residences and neighbourhood. In the Board's opinion, they failed to provide sufficient evidence in support of their arguments that the proposed development would unduly impact the use and enjoyment of their properties, the surrounding residential properties, and the neighbourhoods.

168 On the balance of all the evidence, the Board finds that the opponents did not sufficiently demonstrate that the proposed project is incompatible with or would have a detrimental impact on the adjacent developments and the surrounding neighbourhoods. Nor did they sufficiently demonstrate that the proposed development would be inappropriate for the location and parcel.

169 The Board, on the balance of all the evidence, accepts the evidence of the appellant over the evidence of those speaking in opposition to the proposed development and of the Development Authority. The Board finds the appellant's evidence and arguments persuasive and more compelling than the evidence and arguments of the Development Authority and the opponents.

170 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development with the modifications as required by the Board would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

171 Having regard to the merits of the application and sound planning considerations, the Board, based on the evidence and aforementioned factors, in keeping with section 35 of the Land Use Bylaw, finds that the proposed development with the modifications as required by the Board and with the imposition of specific conditions in the permit is compatible with the adjacent developments and immediate neighbourhood. The

proposed development with the required modifications and specific conditions is, from a planning perspective, appropriate for the parcel.

172 In reviewing and weighing all of the evidence, the Board thus finds that the proposed development warrants approval subject to specific conditions of approval.

Conditions

173 Having regard to sound planning considerations, the Board finds it necessary to impose specific conditions of approval to alleviate some of the concerns raised by the opponents. The conditions include the standard conditions of approval (and advisory comments that are not legally binding conditions) the City Administration recommended for the subject development permit, as well as some additional conditions.

174 The conditions are set out earlier in this decision, and the Board in particular wishes to note that it would not have approved the proposed development without those conditions, especially: (a) The building cannot be used as an emergency shelter, even on a temporary basis; (b) The permit applies to the entire parcel; (c) Parking and access to the adjacent parcels must continue to be provided as set out in the existing access and parking agreements; (d) The building shall be staffed 24 hours a day, 7 days a week by at least one security staff person, and in addition during business hours the building shall be staffed by, at a minimum, one maintenance/rental coordinator for all tenants and one supported living coordinator for residents of the assisted living units; (e) The applicant or property owner shall establish a Citizens Liaison Committee; (f) The building shall be painted in a visually appealing colour scheme and one which minimizes the visual impact of the rooftop mechanical room; (g) Windows shall be added on the east main floor facade as shown in amended plans submitted during the hearing; (h) Change of the interior configuration of the main floor, which will add indoor amenity space that will be available to all residents of the building; (i) The addition of outdoor amenity spaces; (j) There shall be additional landscaping along the entire west side of the property along Edmonton Trail, extended to the southerly property line; (k) The applicant or property owner shall, at its sole expense, pay for the construction of a bus shelter on the east side of Edmonton Trail; (l) Minor changes to the parking configuration are required; (m) The applicant or property owner shall make the proposed waste and recycling facilities located at the northwest portion of the property available to the businesses and tenants of 4820 Edmonton Trail NW on reasonable terms; (n) The plans must show all utility and/or servicing lines; (o) Improvements will be required to the lighting, fencing, and security measures; (p) Installation of security cameras; (q) Rehabilitation of the surface of the parking lot will be required; and (r) Any changes to the intensity of the approved uses on the parcel shall require a new development permit.

175 As stated above, the Board, based on sound planning rationale, finds that the aforementioned conditions are necessary to ensure that the proposed development is compatible with the adjacent developments and the neighbourhood and is appropriate for the parcel.

176 The Board further adds an “advisory comment” (in addition to the standard advisory comments recommended by the City Administration) to the permit with the following statement: “The applicant or property owner is encouraged to enter into a “Good Neighbour Agreement” with the Thorncliffe/Greenview Community Association and any nearby residents or businesses who wish to participate”, which is in accordance with the “Planning Principles for Location of Care Facilities and Shelters (2011)”.

Conclusion

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

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

Rick Grol, Presiding Officer
Subdivision and Development Appeal Board

Issued on this 19th day of August, 2016

UNCERTIFIED