

**Town of Erie
Board of Adjustment
Resolution No. A21-02**

**A Resolution of the Board of Adjustment of the Town of Erie
Affirming the Community Development Director's Interpretation
in the Matter of Precious Metal Converter, LLC**

Whereas, on March 31, 2021, in accordance with Section 10-7-22 of the Erie Municipal Code, the Board of Adjustment held a hearing on Precious Metal Converter, LLC's appeal of the Community Development Director's January 19, 2021 interpretation of the Unified Development Code that pawn shops are not an acceptable use in any zoning district in the Town;

Whereas, at the conclusion of the appeal hearing, the Board of Adjustment voted to affirm the Community Development Director's interpretation in a 5-1 vote, subject to a later final order; and

Whereas, in accordance with Section 10-7-22(4)(b) of the Erie Municipal code, the Board of Adjustment shall adopt a resolution reversing, affirming, or modifying the contested action.

Now Therefore be it Resolved by the Board of Adjustment of the Town of Erie, Colorado, that:

Section 1. The Board of Adjustment hereby affirms the Community Development Director's interpretation of the Code in accordance with the attached Final Order.

Adopted this 12th day of April, 2021.

Michael Farr, Chair

Attest:

Justine Benore, Secretary

Board of Adjustment for the Town of Erie

Final Order Re: Appeal from Community Development Director's Interpretation of the Unified Development Code regarding Precious Metal Converter, LLC's Pawn Shop Use

This matter comes before the Board of Adjustment (the "BOA") on an appeal of the Community Development Director's interpretation of the Erie Municipal Code (the "Code") as it applies to the business license applications filed by Precious Metal Converter, LLC ("PMC"). After reviewing the record, including PMC's business license applications, PMC's appeal application, and the Community Development Director's interpretation, receiving a summary of the matter from staff, and hearing argument from PMC on March 31, 2021, the BOA finds, and orders as follows:

I. Background

A. PMC has, on several occasions, applied or attempted to apply for a business license from the Town to operate a business that includes lending in the nature of pawn shops – consumer cash lending secured by personal property.

B. On January 19, 2021, the Community Development Director issued a formal interpretation letter that found pawn shops are not an acceptable use within any zone district in Erie.

C. On February 4, 2021, PMC filed an Appeal of the Community Development Director's interpretation to the Board of Adjustment.

D. On March 31, 2021, the BOA held a hearing on the appeal, at which PMC appeared and was represented by legal counsel.

II. Appeal Criteria

Pursuant to Code § 10-7-22(4), the BOA must apply the following criteria for review of an appeal of the Community Development Director's decision:

A. The BOA shall not reverse or modify the contested action unless it finds that Town staff erred in the application or interpretation of the terms of this UDC or related policies adopted by the Town.

B. The BOA shall not reverse or modify the contested action unless there is a concurring vote of at least 4 members of the BOA.

III. Analysis

A. At the hearing, PMC argued that the Code is permissive in nature and that under Code § 10-3-1, the Director erred in failing to interpret pawn shops as similar to a permitted use, and therefore allowed in the Town. PMC argued that pawn shops should be determined similar to a General Retail use or a Bank or Financial Institution use. PMC also argued that municipalities may not prohibit pawn shops and that the Town was not acting under a standard of promoting health, safety, morals, or general welfare when it decided pawn shop uses are not allowed in the Town. Town staff presented background related to the appeal, and both attorneys made legal arguments. Because the hearing was limited to matters raised on appeal, no public comment was heard.

B. The BOA finds that although new and unlisted uses may be classified under an existing use, the Community Development Director is not required to permit a new or unlisted use.

C. As admitted by PMC, pawn shops are not expressly included in the definition of General Retail. General Retail is defined by Code § 10-11-3 as follows:

A commercial enterprise that provides goods, products, or materials directly to the consumer. This includes uses such as art galleries, appliance stores, bakeries, bookstores, clothing stores, food stores, grocers, caterers, pharmacies, florists, furniture stores, hardware stores, liquor stores, pet stores, toy stores, and variety stores. This use type shall not include restaurants, personal service establishments, convenience stores, or amusement establishments.

D. The BOA finds that pawn shops are not General Retail uses under the Code's definition, because pawn shops sell used merchandise under a type of loan agreement with the owner of such merchandise. In addition, because of the unique nature of pawn shop businesses, they are subject to specialized regulation by the state, whereas General Retail uses are generally not subject to additional specialized regulation.

E. Similarly, as admitted by PMC, pawn shops are not expressly included in the definition of Bank or Financial Institution. Bank is defined by Code § 10-11-3 in pertinent part as follows: "A financial institution that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities." Financial Institution is defined in the same section as follows:

Establishments that provide retail banking services, mortgage lending, and similar financial services to individuals and businesses. This classification includes those institutions engaged in the on-site circulation of cash money and check-cashing facilities, but shall not include bail bond brokers.

F. The BOA finds that pawn shops are not Bank or Financial Institution uses under the Code's definitions. First, Banks and Financial Institutions provide services to consumers – they do not sell merchandise to consumers. In addition, Banks and Financial

Institutions are governed by both federal and state laws that do not apply to pawn shops. Finally, pawn shops do not provide retail or deposit banking services, mortgage lending, traditional loans, investment service, check-cashing services or any service similar to a Bank or Financial Institution.

G. The BOA finds that the Community Development Director's interpretation of the Code did not violate C.R.S. § 29-11.9-102. Nothing in C.R.S. § 29-11.9-102 prohibits the Town from disallowing pawn shops.

H. The BOA finds that the Community Development Director's interpretation was not contrary to the standard of promoting the health, safety, morals, or general welfare under C.R.S. § 31-23-30. PMC presented no evidence to support this allegation. In addition, Code § 10-1-3 expressly states that the entire purpose of Title 10 of the Code is to promote the health, safety and general welfare of the Town.

I. The BOA finds no error in the Community Development Director's interpretation of the Code in this appeal.

IV. Decision

Based on the foregoing findings, the decision of the Community Development Director in this case is hereby affirmed in its entirety.

Board of Adjustment

Michael Farr, Chair

Attest:

Justin Benore, Secretary