

**Central Planning Authority**

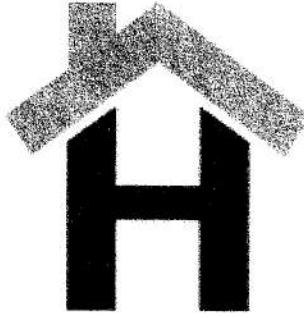
**Block/Parcel 12C517**

**Gas Station & Convenience/Liquor Store Application 7MB**

**Additional background research and information on impact of gas stations on  
real estate values**

**Provided by Strata Lot proprietor Block 12C Parcel 394  
Emile Van den Bol**





Home › Real Estate News › 10 Industries That..

**REAL ESTATE NEWS**

# 10 Industries That Diminish Property Values The Most



by Housely



Everyone wants to live in a nice neighborhood, and if on a budget the rule of thumb has always been to look at the poorest house in the classiest neighborhood. But what happens when an undesirable business moves into your zip code, or even at the end of your block. Just like bad residential neighbors who leave old rusty cars on their lawn, the wrong type of industry can send your home value plummeting. You can't always predict what businesses will be approved by your zoning board to spring up in the future; however, you can be on

the lookout for a few which will not mean good news for your overall home value.

Here are 10 of the industries that can hurt property values.

## **1. Hospitals**

You would think people would feel reassured living right near a hospital, however, statistics show a different story. Screaming sirens from ambulances, frantic through traffic and even medical helicopter units can make your neighborhood feel like you live in an episode of "MASH." Realtor.com, cites a study that shows homes with a hospital close by had a 3.2% reduction in sales price.

## **2. Convenience Store With Gas Station**

People will be driving in and out of your intersection, hanging out at the property, and buying lots of lotto tickets, cigarettes, and beer when they gas up. Although handy, these shops do nothing to help property values and hurt them significantly according to Zillow.com. Although the realtors questioned on the site did not have exact statistics, common sense would show that the increase in robberies, accidents, traffic and pedestrians would add up to decreased property value. Still, many gas stations with mini-markets are springing up like wildfire.

## **3. A Badly Rated School**

Real estate sites usually contain information about the "grade" of a school to attract buyers. Still, if a home is located near a school that is known for truancy, crime, drugs and vandalism, property values are bound to plummet, says Business Insider. Some schools deteriorate over time, and what was once a good school can

go bad in a hurry. Many older buyers would not even like to live right next door to the best school, as there is non-stop racket from ringing bells, buses and kids screaming at recess.

#### **4. Gentlemen's Club**

In stark opposition to the Inman report concerning strip clubs having no adverse effect on property values, other sources say that they definitely are a property value drag at 14.7%, according to Realtor.com. They cite an example of a zip code in St. Louis that had 10 of these "Gentlemen's Clubs", there were only a few houses sold with a median price of only \$10,000. Does anyone really want their kids to have to walk past such a place on the way to the local library or school? How about the "gentlemen" who frequent these clubs, the loud music, and neon signs?

#### **5. Funeral Parlors/Crematoriums**

Dead bodies going in and out the door and people weeping in the driveway next door as the hearse pulls out may not be your ideal dream of home. As can be expected, the opening of a neighborhood funeral parlor may give house hunters the creeps. The fumes from funeral parlors are said to be toxic, so no one wants to breathe in ash and chemical waste from the funeral home down the street. Statistics show that funeral homes and crematoriums are correlated with a 6.5% decrease in home value.

#### **6. Cemetery**

It's not just fear of the dead that keeps people from moving in an area close to a cemetery. There is also crime, trespassers, ghost hunters and funeral processions

driving by all of the time. A New York article says that although some homes located near a cemetery sold for a higher price as they had increased square footage. Sellers need to keep in mind that almost half of the population believes in ghosts, so potential buyers may literally feel scared away. Realtor.com gave a negative correlation of the effect of a cemetery on property value as a whopping 12.3%.

## **7. Halfway House/Homeless Shelter**

While it's a plus for people who get out of jail or mental institutions to have a place to call home, it's not ideal for property values. Odds are that if you hear of any type of social housing opening in a residential area, the neighbors will be far less than pleased. Zoning wars are common when a church mission or halfway house buys or builds a property in a middle-class neighborhood, and the complaints are that their quality of life will go down as well as their property values by having transients, possible sex offenders and/or ex-cons living next door. The Baltimore Sun did an article about the effect of a teen group home had on its residents, with one woman saying she fears going out of her house to walk her dog as the residents were exposing themselves to her and some residents say they are upset with the behavior, including spitting, littering, and harassment. Although many social welfare groups say that halfway houses have no negative impact property values, many complaints from people who actually live where such a place is opened speaks volumes. In a similar situation, Realtor.com reports that homeless shelters in a neighborhood correlate with over a 12% decrease in home value.

## **8. City Dumps**

When the wind blows the right way, potential home buyers will get a good whiff of

what is in the neighborhood, even if they don't see the flocking seagulls or smoke rising from trash disposal. Having a city dump nearby will decrease your home value by approximately 7% according to Business Insider.

## 9. Power Plants

Just as popular as the city dump, having a power plant in your zip code is not a selling feature. It also has a 7% depreciation value on homes, not just from noise, but from fear of toxic waste, industrial accidents, and waste disposal.

## 10. Shooting Range

It's no surprise that residents don't like the sound of gunfire interrupting their peace and quiet and shooting ranges are where it goes on indoors and outdoors. Although the effect on home values is hotly debated by homeowners and gun enthusiasts, Realtor.com cites a 3.7% drop in home values if it's near a shooting range.

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## The Impacts of Gasoline Stations on Residential Property Values: A Case Study in Xuancheng, China

Qinna Zhao, Mengling Liu, and Qi Chen

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In this paper, we examine the effect of gasoline stations on residential multifamily housing prices in Xuancheng, China. First, a survey examining beliefs and the Not in My Backyard (NIMBY) issues associated with gasoline stations investigated the public attitude toward the impact of gasoline stations. The results show that, although the gasoline stations have adopted advanced safety management, 86% of people believe that they will decrease nearby housing prices. Second, in March and April 2016, a hedonic pricing model was used to measure the impact of gas stations on the sales' prices of 601 residential units in 22 multifamily neighborhoods that are up to 1,000 meters from the gas stations. The results show that housing prices increase significantly with every additional kilometer from the nearest gasoline station, and the closer to the gasoline station that the house is, the more negative the impact on the housing price. The closest 100-meter band showed almost a 16% reduction in housing price, and the furthest affected band (301–600 meters) was down by almost 9%. The negative effect was not observed at distances beyond 600 meters.

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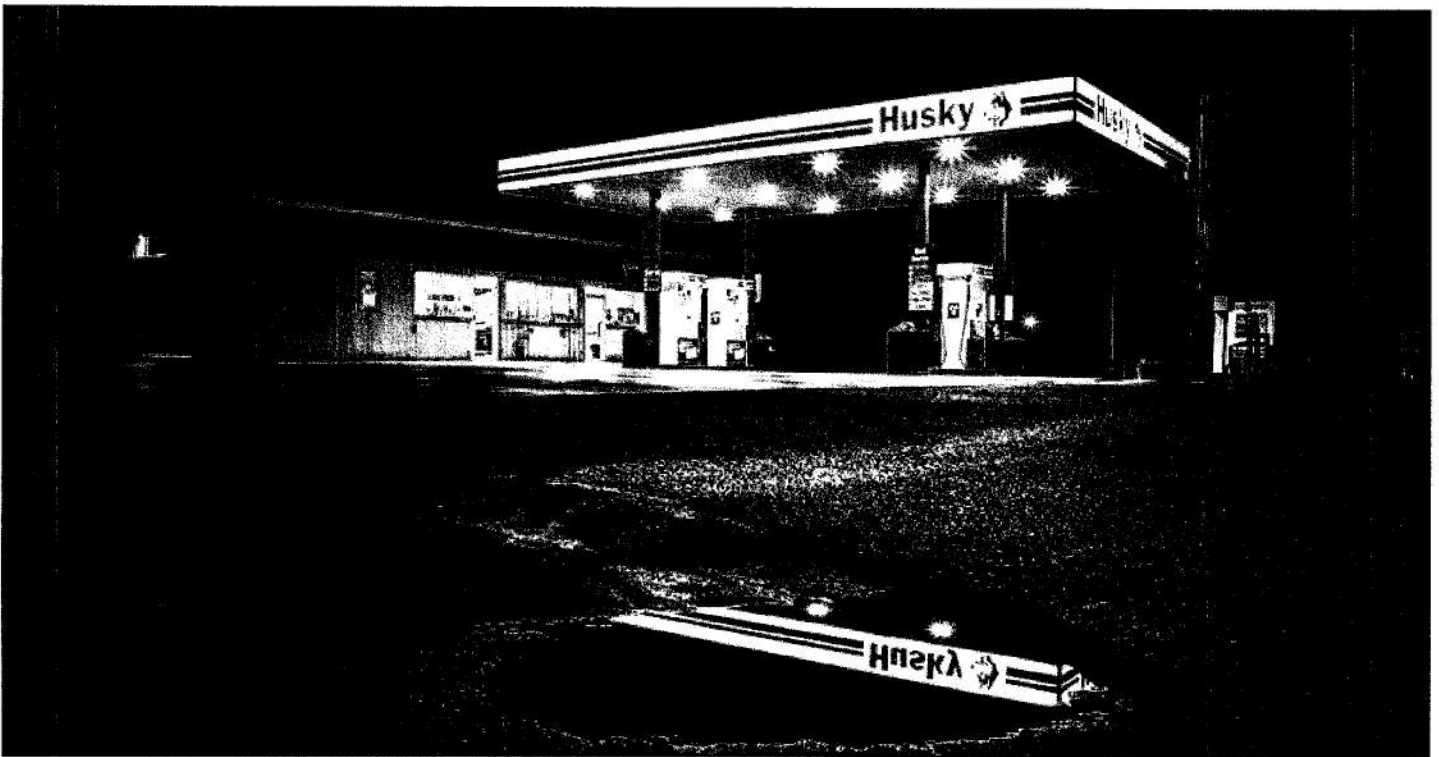
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MENU

HOME BUYING

# Cemeteries, highways, gas stations: Here's what decreases your property value

By: Jessica Mach on May 14, 2018



It's often said that the biggest financial investment a person will ever make is buying a home. Why? Because, in addition to wielding a hefty price tag, a home is one of the few things you can buy whose value is likely to actually *increase* with the passage of time.

Likely to — but not necessarily. If you think you'll eventually want to sell your home, there are a handful of factors to be wary of when you're buying, that could potentially impact its value — and not in a positive way.

Today, we'll talk about one of those factors: location.

How much does location matter? Maybe more than you think, according to Ryerson University professor Murtaza Haider, who says that two houses built in two different locations, but that are otherwise completely identical in size, layout, and composition, could sell for pretty different prices.

So, what locations should you try to steer clear of if you plan to sell in the future?

Below, we ask Haider, whose research looks at the correlation between location and housing prices in the Greater Toronto Area. We also talk to Aaron Luftspring, a sales rep at Toronto-based brokerage Barry Cohen Homes, and Shawn Stillman, a broker at Mortgage Outlet, about what buyers should look out for.

## Highways, and other “busy streets”

Haider and Luftspring were both emphatic about this point: busy streets with heavy car traffic are not great for real estate value. The problem lies mostly in the noise — car traffic is rarely, if ever, serene — but it's also about what's usually absent when big roads are present: green space. And, if there's another thing that Haider and Luftspring agree on, it's that a home with access to green space — lawns, parks — will probably command a higher premium than a home without it.

That being said, not all streets are made equal. If your home is close to a commercial street with heavy foot traffic, that could definitely be a good thing.

“Let's just say you were a block away from Yonge Street,” says Luftspring, referring

to one of Toronto's main commercial roads, "where you've got phenomenal shops. You don't need to get into your car to grab groceries or go for a stroll to the nearest Starbucks or Second Cup. That would increase the value of your home."

Luftspring adds that different home types will be impacted by busy roads in different ways. "It's... accepted in general to have more of a city feel when you're living in a condo right on a busy street. But when you're a residential, detached home, it tends to have a negative connotation."

## **Polluted areas**

Gas stations, railroad tracks, hydro towers, power stations, and industrial areas — proximity to any of these things definitely won't help improve your home value, since they can generate and/or attract odors or other substances that could affect your air quality.

Power lines are also up there — even though there's no evidence that they impact human health, says Haider, who found that homes close to power lines tend to sell for six to ten per cent less than other properties.

"People mistakenly believe that power lines cause cancer. There's no proof for it, but people still believe it," he says. "Also, nobody wants to look at the wires and big towers behind their houses. So visually, it's unappealing, and then people have health scares."

## **Cemeteries**

And it's not because of the ghosts. As with the power lines, cemeteries are unpopular amongst homebuyers purely because they're not visually appealing.

"Nobody likes to look at graves," Haider says.

## And yet...

These are all general rules to go by, but everything always comes down to the specific market that you're shopping in, says Stillman, who works with Toronto homebuyers.

In tight markets like Toronto's and Vancouver's, location does make a difference — but perhaps to a lesser extent than it would in say, Calgary or Halifax. "Housing is in such short supply," says Stillman. "Stuff will still sell. It'll just sell for slightly less."

For example, he says, "there's a gas station at Lawrence and Don Mills. And within 500 feet of that there are houses that are worth \$5 million."

"It's tough to paint everything by the same brush."



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COMMENTS

# The Gas Station – An Inconvenient Neighbor

By **admin** - March 13, 2011

*By Elizabeth Dillon, SouthStar*

Gas stations have become an icon of Americana. In the early days of the American automobile, drivers bought gas. As car ownership increased, a new market opened up for stations that catered to motorists and the first gas station in the United States opened in 1958 in Omaha, Nebraska. Since then, gas stations have become ubiquitous; in both rural and urban and suburban settings. They are as numerous as package stores in some states, because many of them are package stores.

In our area, there are three gas stations on Moreland Avenue, between I-20 and Wylie Street to the north and three gas stations on Moreland, between I-20 and Custer Avenue, to the south of I-20. The distance between Custer and Wylie is approximately 3.2 miles. There are approximately 3.2 gas stations per mile along this portion of Moreland. Do we really need more gas stations on Moreland?

According to census data, there are 161,768 gas stations in the United States, and Georgia is home to 4,000. The world in the rate of passenger vehicle ownership per capita, at about 800 per 1,000. With this many cars and the demand – the U.S. consumes half of the world's gasoline. Driving is a central part of the American way of life and gas stations will continue to be a part of our landscape. However, it is also becoming increasingly clear that gas stations in residential neighborhoods, and that identifying a suitable location for one should be done very carefully. When considering that a gas station might provide to a neighborhood, it is also important to consider the negative impact that it might have on the health of your family, and the health of the community that it might serve.

In December 2010, Spanish researchers at the University of Murcia released a study on the effects of air pollution from gas stations. This study found increased levels of airborne chemicals within 150 feet of gas stations due to the evaporation process. The greater the number of pumps at the gas station, the larger the area of contamination was found to be from the station. Perhaps the most harmful of these chemicals is Benzene. Benzene is a known carcinogen that can affect the central nervous system, respiratory track, and the immune system. After prolonged exposure, it can cause brain damage, anemia, and leukemia. Toluene is another chemical that is found in gasoline vapors; and it can cause arrhythmias, liver and kidney failure, and developmental problems in fetuses.

In addition to potentially affecting your health, a nearby gas station may also affect your quality of life. Gas stations are designed on a scale to accommodate large numbers of automobiles and tractor trailers, while low density residential streets and neighborhood commercial centers are designed for a different scale – that of the individual resident.

Gas stations are often set back from the street with the pumps in front of a one-story building. To provide a safe area for drivers to refuel, gas stations are often set back from the street with the pumps in front of a one-story building. To provide a safe area for drivers to refuel, gas stations are often set back from the street with the pumps in front of a one-story building. To provide a safe area for drivers to refuel, gas stations are often set back from the street with the pumps in front of a one-story building.



and fend off would-be armed robbers, gas stations are very well lit. This can cause light pollution to the particular nuisance if the station continues to operate late into the night or 24 hours a day, as many stat

Gas stations have large and numerous curb cuts to allow for the easy flow of traffic, but these curb cuts unpleasant and unsafe environment for pedestrians and bicyclists. This kind of environment discourages [www.bicycleuniverse.com](http://www.bicycleuniverse.com) states that walking is 36 times more dangerous than driving in the United States to walk. Atlanta is already the 10th most dangerous city for pedestrians according to a report from the Safe Streets Partnership. Pedestrians in the city account for 11.8% of all traffic deaths, despite the fact that only 1.3% of the city's population lives within a half mile of a gas station. The presence of an auto-oriented business such as a gas station near your home will actually decrease property values by creating an unsafe and undesirable environment in which to walk.

A gas station will not only impact the quality of your life, but also the quality of life of future residents of the neighborhood. The development of a gas station will impact the landscape for generations, as gas stations are not easily converted into other uses. Creative reuses of old filling stations in parts of our neighborhoods as restaurants or bars, but these were rare. Gas stations which had a relatively small footprint and which were of a scale that was consistent with the rest of the neighborhood. Modern gas stations are four or five times the size of a typical urban residential lot, and draw much more traffic than a 1950s gas station with an attendant who checked your oil and cleaned your windshield.

The pumps, canopies, and building that you see above ground may seem easy to demolish, but a bigger problem is the large underground fuel storage tanks that serve the station. The removal of these tanks, a process caused by leaks from them, is a very involved and expensive process that will make that site undesirable for future development. Leaking underground storage tanks, is an undesirable consequence of having a gas station next door or even across the street. Diesel fuel that leaks from these tanks can move great distances below ground and can reside there for decades, affecting those adjacent properties.

Not only does the construction of a gas station create negative health impacts to a neighborhood, it also prevents the development of a project on that site which may have had a positive impact on the neighborhood. The gas station will remain there for at least fifty years and will be a reminder of the missed opportunity for a development that could promote a more vibrant neighborhood. Smart developments tend to increase transportation options and property values. They encourage residents to walk, bike, or use public transit, just remain tied to their cars.

As most of us are motorists at one time or another, it may seem convenient to have a gas station located nearby. However, with already eight stations in and around our neighborhoods, so most of us already live fairly close to one. However, the location, design, and impact of any additional gas stations in our neighborhoods as the documented in the report suggest that the impact on the character of the neighborhood suggest that it is anything but convenient in the long run.

For more information on the impact of gas stations on a neighborhood, and on development in the Moreland Corridor, contact Elizabeth Dillon at [info@southstarcdc.org](mailto:info@southstarcdc.org).

admin



Timothy H. Harper  
Associate Broker, Long and Foster Realtors  
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1/14/2013

To Whom It May Concern:

The Kensington Heights Citizens Association recently asked me to render an opinion as a real estate expert regarding the impact of a large volume gas station at Westfield Shopping Town Wheaton on neighboring home values. I have been a real estate Associate Broker and salesperson working in the Kensington area for twenty years. I have a deep understanding of the nature of buyers. There are several issues in which to consider:

Question one: Would a home immediately adjacent to a gas filling station have a lower value than a similar home in the same neighborhood not backing to a gas filling station?

Question two would a home immediately adjacent to a large filling station have a lower value than they a home backing to a retail shopping center?

Buyers of real estate have heightened senses. Buyers are concerned about changes to their investment. This would include any influences that might affect the home's value. A real estate purchase is often times the largest single investment in one's life. If there is an influence, real or imagined, it impacts what one would pay for the property. These influences would include sound, sight, and health. (If another similar house priced for the same amount did not have the worry then the one without the worry would sell and sell for a higher price.) So the answer is yes a home that is adjacent to a filling station would have a lower value than one that did not back to a filling station.

The houses adjacent to the proposed large filling station have their value impacted due to the retail development at Westfield Shopping Town at Wheaton. However, this impact is minimal compared to the impact due to a large filling stations impact. The filling station would put a cloud impacting one's health in addition to the additional noise and smell. Whether real or perceived if one's health would be impacted by gasoline fumes from filling and idling would affect its value. We have seen this over the years in homes located near high tension electrical lines. Studies for years had been inconclusive on the health impact of High Tension electrical lines(see attached article by Gary Zeman). Homes backing to these lines and their associated fields had a benefit of the use of the fields and no neighbors backing to the homes. However, homes adjacent to the power lines would sell for considerable less money and take more time to sell then other similar homes in the same neighborhood. So there was no positive proof that a health hazard existed yet it had substantial effects on its value and salability. So in taking

this into account my opinion is while these homes are impacted adjacent to a shopping center they will be further impacted by being adjacent to a filling station.

In conclusion if the proposed filling station moves forward and is approved it will have a substantial impact on the value of these homes. In speaking with many of my colleagues in my Bethesda Office all said they would feel obligated to disclose the presence of a large filling station when showing buyers in this area. Whether the impact will be felt by homeowners not adjacent to the filling station is questionable. If the market see homes (the adjacent homes) selling for less than their historical numbers then appraisers and homebuyers might view this as an overall drop in neighborhood value when comparing homes that do not back to the filling station.

Sincerely,

Timothy H. Harper

Timothy H. Harper

Associate Broker



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## Appendix 'C'

**IN THE MATTER OF SECTION 48 OF THE DEVELOPMENT AND PLANNING LAW  
(2015 REVISION)**

**AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE CENTRAL  
PLANNING AUTHORITY TO GRANT PLANNING PERMISSION TO CONSTRUCT A  
GAS STATION WITH CONVENIENCE STORE WITH THREE (3) UNDERGROUND  
FUEL TANKS AND A GENERATOR WITH ASSOCIATED FUEL TANK ON BLOCK  
11D PARCEL 16**

**BETWEEN**

**MAJDI BEJI**

**APPELLANT**

**AND**

**CENTRAL PLANNING AUTHORITY**

**RESPONDENT**

**CORAM**

**PETER A. BROADHURST**

**DEPUTY CHAIRMAN**

**ANDREW GIBB**

**MEMBER**

**CINDY O'HARA**

**MEMBER**

**TRAVIS RITCH**

**DEPUTY CHAIR**

**APPEARANCES**

**MAJDI BEJI**

**FOR THE APPELLANT**

**SIMON LAWSON**

**FOR THE APPELLANT**

**WAIDE DACOSTA**

**FOR THE APPLICANT**

**ALAN NEESOME**

**FOR THE APPLICANT**

**DECLAN O'BRIEN**

**FOR THE APPLICANT**

**KELLY BROWN**

**FOR THE APPLICANT**

JOHNNY E. BROWN	FOR THE APPLICANT
KASHKA HEMANS	FOR THE FIRST RESPONDENT (CENTRAL PLANNING AUTHORITY)
HAROON PANDOHOIE	DIRECTOR OF PLANNING
COLLEEN STOEZEL	PLANNING DEPARTMENT
TANYA VASQUEZ -EBANKS	FOR MINISTRY PLAHI

DATE OF HEARING: 20 JANUARY 2017

### **Decision**

The decision of the Planning Appeals Tribunal (the "Tribunal") is to refuse the appeal for the reasons set out herein and affirm the decision of the Central Planning Authority (the "Authority").

### **Reasoning**

1. Mr Beji appeals the decision of the Central Planning Authority ("CPA"), dated 25 October 2016 to grant planning permission to JKS Holding Limited ("the Applicant") to construct a gas station with convenience store, three (3) underground fuel tanks and a generator with associated fuel tanks ("the development") on Block 11D, Parcel 16 ("the subject property").
2. At a meeting on 25 May 2016 the CPA reviewed the Applicant's application, considered the views of the objectors and the comments and opinions of relevant Government agencies, and determined to grant the Applicant planning approval for the development. The CPA communicated its decision to the Applicant

by way of a letter dated 2 June 2016 in which it cited the following reasons for the decision:

- *"The proposed use is consistent with the objectives of Section 3.02(b) of The Development Plan 1997. Further to Section 3.02 of the Plan, the Authority is satisfied that the design and construction of the proposed development reflects the local architectural heritage and a landscape plan will be required as a condition of approval which also must reflect the local architectural heritage.*
- *Pursuant to Regulation 13(b) of the Development and Planning Regulations (2015 Revision), the Authority is satisfied that the proposed development is a less intensive form of development than what would typically be found in the General Commercial zone. More specifically, the proposed development is a one storey building, approximately 4,000 square feet in size. This size development is far less intense than the 5 to 7 storey buildings with tens of thousands of square footage that can be found in the General Commercial zones.*
- *Pursuant to Regulation 13(b) of the Development and Planning Regulations (2015 Revision), the Authority is satisfied that the proposed development will cater principally for the needs of persons resident in, or in the vicinity of, the zone. More specifically, the neighbourhood commercial zone in this area stretches about two thousand feet to the north of the subject site and several thousands of feet to the south of the site. In the vicinity of this area are many residential and commercial developments and the*



*proposed development will principally serve the needs of the persons in those areas.*

- *Having outlined the consistence with Regulation 13, the Authority also notes that the proposed development complies with other provisions of the Development and Planning Regulations (2015 Revision).*
- *The surrounding area includes residential, commercial and industrial uses and the Authority is of the view that the proposed development is consistent with the established character of the area in terms of use, height and mass and scale.” [Page 25-26: Record of Appeal (“Record”)]*

3. It was evident from the Record that the CPA took into account the comments from the objectors but did not consider that the objections aired raised grounds for refusing permission. In giving specific treatment to the objections the CPA stated as follows:

- *“There is no evidence that the proposed development will negatively affect public health.*
- *The Authority does not agree that the proposed development will cause light pollution. The Authority is unaware of any complaints due to the light from the numerous other gas stations on the Island. Further, subject site is adjacent to a four lane highway which already had street lighting.*
- *The Authority does not agree that there will be noise pollution. All development, including residential, will have a certain level of associated noise. As the site is zoned*

*Neighbourhood Commercial, one has to expect that the site will be developed for commercial purposes with its associated pedestrian and vehicular activities. This is typical of all developments and the Authority cannot consider this to be pollution.*

- *Any noise or behaviour that is outside the scope of the law is a matter for the RCIP.*
- *The comments regarding traffic close are unclear and unconvincing.”*

**[Page 26-27: Record of Appeal]**

4. The CPA granted planning permission subject to seven preconditions set out in the said decision letter **[see page 27-28: Record of Appeal]**.
5. In the Appellant's Grounds for Appeal the Appellant stated three essential grounds:
  - (i) The decision was unlawful.
  - (ii) The decision was unfair.
  - (iii) The decision violated human rights.
6. The Appellant advanced a preliminary point concerning the notice and argued that the notice was not sent to all persons within the area in accordance with regulation 8(12A) of the Regulations. It was pointed out that pursuant to regulation 8(12) of the Regulations a notice had been published and accordingly, all persons within a radius of 1,000 feet of the boundaries of the land were permitted to object and state their grounds. Regulation 8(12) of the Regulations did not operate to require that written notice of the proposed development be given to all owners

within 1,000 feet; it merely gave that class of person a right to object to the proposed development after a notice pursuant to s.8(12) had been published in a newspaper. That published notice covered all persons that would have been served a written notice in accordance with s.8(12A), which would have been those persons with property within 300 feet of the development pursuant to regulation 8(12A)(a)-(c). The preliminary point was accordingly rejected.

7. A second preliminary point regarding fresh evidence by way of a media publication was also rejected by the Tribunal as the Tribunal is required to make its determinations on the Record of Appeal (s.48 Development and Planning Law (2015 Revision – “the Law”)).
8. The Tribunal then advised the Appellant that the Tribunal is not the appropriate forum to deal with any arguments concerning human rights and those arguments would not be entertained before the Tribunal. The appropriate forum is the Grand Court (clause 26(1), Cayman Islands Constitution Order 2009 (as amended)).
9. Furthermore the Tribunal was not prepared to hear argument on the fairness of the CPA hearing, based on its review of the Record prior to the hearing. According to the Record there had been a full hearing before the CPA where all objectors were heard by way of a written petition signed by 16 objectors while 4 objectors including the Appellant presented their objections in person. The CPA heard from the objectors and noted their concerns. It determined that many of those concerns would be addressed through compliance with the requirements of the Petroleum Inspectorate and the Water Authority; some of those concerns it determined to be invalid (see paragraph 3 above).

10. The Appellant agreed with the Tribunal that the essential argument he wished to advance was the argument that the decision of the CPA was unlawful and an error in law. The hearing proceeded on that basis.
11. The Appellant submitted that the decision of the CPA was unlawful and argued that it was a breach of section 3.02 (b) of the Development Plan 1997 which emanates from regulation 13(1)(b)(iii) of the Development and Planning Regulations (2015 Revision) (the "Regulations").
12. Regulation 13(1)(b) states that "*Neighbourhood Commercial Zones are zones in which the primary use is a less intense form of development of that permitted in a General Commercial Zone and which cater principally for the needs of persons resident in, or in the vicinity of, the zone*".
13. The Appellant argued that the CPA decision is clearly in contradiction with regulation 13(1)(b) in both requirements. He stated that the CPA failed to distinguish between General Commercial and Neighbourhood Commercial and that the interpretation of 'less intense' is clearly wrong given that it was specifically stated in regulation 13(1)(a)(vii) that a gas station is to be located in a General Commercial Zone.
14. The essence of the Appellant's argument was that a gas station use was an intense use of land and should not be permitted in a Neighbourhood Commercial Zone in that it was not and could not be a less intense form of development, and secondly, that it did not cater principally for the needs of persons resident in, or in the vicinity of, the zone. Furthermore this use was inherently obnoxious and should not be permitted in this type of zone.
15. The Appellant, when asked by the Chairman if he had any case authority to support his argument regarding the intensity or obnoxiousness of the type of proposed development, advised the Tribunal that he did not.

16. The Appellant then attempted to argue the merits of the case that had been presented before the CPA. Counsel for the CPA pointed out that the Record was all that could be brought before the Tribunal in accordance with S.48 of the Law.
17. The Appellant rested his case on the sole argument that the decision was an error in law.
18. Counsel for the CPA then presented the position of the CPA and stated that the appeal turned on a fundamental misunderstanding of regulation 13 of the Regulations. He stated that the law provides for the construction of petrol stations in Neighbourhood Commercial Zones and the tests were intensity and needs of the persons resident in, or in the vicinity of the zone. He stated that the CPA was clear in its decision with respect to both of these grounds.
19. Counsel for the CPA then read into the Tribunal record the reasoning of the CPA found at page B2 of the Record, said reasons being set out in part at paragraphs 2 and 3 above.
20. Counsel for the CPA submitted to the Tribunal that its task is strictly to consider the reasonableness of the decision of the CPA and whether there had been an error in law. He argued that regulation 13(1)(b) was permissive of this type of use under certain circumstances and the focus should be on those circumstances and not whether the anticipated use could be considered obnoxious in a general sense. He further pointed out that regulation 9(5) of the Regulations referred to obnoxious uses in Residential Zones; the proposed development is in a Neighbourhood Commercial zone. In his written submissions he argued that the Tribunal may not intervene to substitute its own opinion (or, indeed, that of the Appellant) for that of the CPA. The decision of the CPA is susceptible to

challenge only to the extent that the decision was made in breach of any of the section 48 [of the Law] criteria. Counsel for the CPA submitted that the appellant has failed to show that the decision was flawed on the basis of one or more of the section 48 criteria.

21. In his reply the Appellant reiterated his position concerning intensity as an argument that a petrol station was not a less intense form of use that could be permitted in a Neighbourhood Commercial zone.
22. Mr DaCosta for the original Applicant argued that the Appellant had conceded that such a use could be allowed in a Neighbourhood Commercial Zone. He stated that that all objections had been heard and considered at the CPA hearing including the zoning and that the Applicant had been more than fair in the Notice of the application.

### **Conclusion**

23. The Tribunal noted that regulation 13(1)(b) of the Regulations does not provide that a commercial use in a Neighbourhood Commercial Zone, simply because it offends certain residents, is unacceptable. A Neighbourhood Commercial Zone is one in which "*the primary use*" is "*a less intense form of development of that permitted in a General Commercial zone*". In such a zone there could be, in theory, as much commercial activity as there is neighbourhood or residential activity; the primary use is envisaged to be less intense versions of developments found in General Commercial zones. The tests for inclusion in a Neighbourhood Commercial zone are whether a development is i) a less intense version of one that might be found in a General Commercial zone, and ii) whether that development caters principally for the needs of persons resident in, or in the vicinity of the zone.

24. The Tribunal is not satisfied that the CPA made an error in law. As discussed immediately above, by definition a Neighbourhood Commercial zone can contain any development permitted in a General Commercial zone, provided the development is less intense than it would be if it were in a General Commercial zone and it caters to the needs of nearby residents. The argument that a petrol station, which is a permitted General Commercial use, is inherently obnoxious and intense and therefore cannot be permitted in a Neighbourhood Commercial zone no matter how small or quiet it is has no supporting authority and is at odds with the tests set out in the Regulations. The Tribunal is satisfied that the CPA applied those tests and accordingly no error in law was made (albeit the CPA came to a different view than that urged by the Appellant and other objectors).
25. The CPA hearing was heard with all concerned objectors being present; their objections were heard and considered. The Appellant has not demonstrated that the CPA took into account irrelevant considerations or failed to take into account the evidence before it, or that the decision was patently unreasonable considering all of the matters before the CPA.
26. The Tribunal is mindful of the passage in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 at 230 where Lord Greene said this on the issue of unreasonableness:

*It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming.*

The Tribunal is satisfied that this is not the case in this instance.

The Appeal is therefore denied with no order as to costs.

Dated this 2nd day of February 2017

A handwritten signature in black ink, appearing to read "P. H. Broadhurst". The signature is written in a cursive, flowing style with a long horizontal stroke extending from the end.

Chairman



