

**Re: In the Matter of an Appeal by Northpark Motor & Recreation (1990) Ltd. from the Decision of the Director of Fair Trading (as delegated) not to issue an automotive business license for retail/vehicle sales to Northpark Motor & Recreation (1990) Ltd.**

**August 8, 2013**

*Appeal Board: Paul Alpern (Chair); Hilda Lupul; Caren M.L. Mueller*

*Representing the Applicant, Northpark Motor & Recreation (1990) Ltd.: Dennis LaGrange (Owner) and Ted Trowsse (General Manager)*

*Representing the Respondent, Alberta Motor Vehicle Industry Council ("AMVIC") and the Director of Fair Trading: Vivian Stevenson, legal counsel (Duncan Craig LLP)*

*Appeal Heard: July 10, 2013 commencing at 9 am.*

*Location: Service Alberta Boardroom, 3rd Floor, Commerce Place, 10155 - 102 Street, Edmonton, Alberta*

An Appeal Board constituted pursuant to section 179 of the *Fair Trading Act*, R.S.A. 2000, c. F-2, and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199) met to hear an appeal by Northpark Motor & Recreation (1990) Ltd. ("Northpark") of the December 18, 2012 decision of the Director of Fair Trading (as delegated) (the "Director") not to issue an automotive business license for retail/vehicle sales to Northpark.

## **THE ISSUES**

1. Did Northpark take reasonable and prudent steps to determine if appropriate zoning was in place before relocating to 11480 – 156 Street, Edmonton (the "Current Location")?
2. After relocating to its Current Location, has Northpark taken reasonable and prudent steps to pursue appropriate zoning?
3. If appropriate zoning for Northpark's Current Location is not in place, does the Director have any discretion to issue an automotive business license to Northpark that is inconsistent with the current zoning?
4. In the circumstances, is it appropriate for this Appeal Board to vary or quash the decision that is being appealed?

## **RELEVANT LEGISLATION**

### ***Fair Trading Act***

**104**

- (1)** *No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.*
- (2)** *If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.*

- 127** *The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:*
- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;*
  - (b) the applicant or licensee or any of its officers or employees*
    - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed;*
    - (ii) fails to comply with a direction of the Director under section 151(3),*
    - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,*
    - (iv) fails to comply with an undertaking under this Act,*
    - (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,*
    - (v.1) fails to comply with any other legislation that may be applicable,*
    - (vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or*
    - (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;*
  - (c) in the opinion of the Director, it is in the public interest to do so.*

- 128(1)** *Before refusing to issue or renew a licence and before a licence is suspended or cancelled or terms or conditions are imposed, the applicant or licensee must be given*
- (a) written notice of the proposed refusal, suspension or cancellation or the proposed terms and conditions with reasons, and*
  - (b) an opportunity to make representations to the Director.*

**179 (1)** *A person*

- (a) who has been refused a licence or renewal of a licence,*
- (b) whose licence is made subject to terms and conditions,*
- (c) whose licence has been cancelled or suspended under section 127, or*
- (d) ...*

*may appeal the decision or order by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order.*

- (2) The Minister must, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed in accordance with the regulations or to an appeal board designated under subsection (4).*
- (3) The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.*
- (4) The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.*
- (5) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.*
- (6) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed.*

- (7) The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.*
  - (8) An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.*
- 180**
- (1) Subject to subsection (2), an appeal under section 179 does not affect the status or enforceability of the decision or order being appealed.*
  - (2) A person who is appealing a decision or order under section 179(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision or order being appealed until the appeal board renders its decision on the appeal.*
  - (3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision or order being appealed until the appeal board renders its decision on the appeal.*

### **Automotive Business Regulation**

- 3** *(7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.*
- 4** *(1) The Director may refuse to issue or to renew a licence to an applicant if*
- (a) the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the automotive business to be operated under the licence;*
  - (b) in the Director's opinion, the applicant has contravened the codes of conduct that apply to the automotive business to be operated under the licence, or*
  - (c) a claim has been paid from the compensation fund in respect of the applicant and the applicant has not reimbursed the compensation fund for the amount of the payment.*
- (2) The Director may require an applicant for a class of automotive business licence to furnish a security in a form and amount approved by the Director.*

### **BACKGROUND AND EVIDENCE**

Dennis LaGrange has owned and operated Northpark Motor & Recreation (1990) Ltd. since 1973. At present, Northpark has approximately 10 employees. Northpark buys and sells light and heavy vehicles. Northpark moved to its Current Location on February 1, 2012 on the assumption that appropriate City of Edmonton zoning was in place and that its AMVIC business license would fully transfer to the Current Location allowing it to retail and wholesale both light and heavy vehicles. Northpark's assumption was incorrect. The Current Location is not zoned for the sale of light vehicles (under 4,000 kg). Accordingly, AMVIC refuses to issue Northpark an automotive business license for retail/wholesale vehicle (under 4,000 kg) sales. Northpark remains licensed by AMVIC to sell heavy vehicles (4,000 kg or greater), for temporary storage and for automotive and equipment repair. Northpark appeals the decision of AMVIC not to issue an automotive business license for retail/wholesale light vehicle sales.

Dennis LaGrange's (Northpark Owner) Evidence Included:

1. Northpark has been in the automotive sales business in Edmonton since 1969.
2. "I have owned and operated the business at various locations since 1973."
3. "I have always complied with the law and with the rules."
4. "I was part of a team who participated in the formation of the Fair Trading Act."
5. "The intention of the legislation is to treat people fairly."
6. "Licensing is way down on the scale of things."
7. "I know Northpark needs a license to operate."
8. Prior to relocating to its Current Location, Northpark was leasing space from Kia West. They sought an extension to the lease, but Kia needed the space and refused to grant an extension.
9. As Northpark's lease of the Kia space was expiring, "I was frantically looking for space".
10. "I hired a realtor who found the Current Location. The realtor said the new space was zoned properly."
11. "We relied on a February 9, 2012 fax from the City of Edmonton Business Licensing department advising: "...I received your request to change the address for your business license. As there have been some changes to the Business License Processing, we now require you to get the AMVIC License for the location at 11480 – 156 Street before we can issue a revised license at that address. There will be a \$40.00 administrative fee as well to change the license over...""
12. We relied on a plain reading of Edmonton Zoning Bylaw 12800, 420.2.6, which zoning applies to our Current Location and which allows for "Vehicle and Equipment Sales/Rentals".
13. A "vehicle is a vehicle".
14. The City of Edmonton's zoning department got involved and said the Current Location is not zoned for its intended use.
15. I was "maliciously misled by the City of Edmonton."
16. "I appealed the zoning, kept AMVIC abreast of the situation, paid AMVIC all licensing fees for 2012 and 2013 but was not issued a license."
17. "I was aware in March 2012 that the Current Location was not properly zoned for car sales."
18. In October 2012, Northpark appeared before the Development Appeal Board (DAB).
19. "The DAB process was flawed... bureaucrats are always about the letter of the law and not the spirit of the law."
20. I was invited to attend a meeting at AMVIC offices on or about December 11, 2012. That meeting date was changed on or about December 6 to December 17, 2012. I saw no value in attending the meeting and, in any event, I was unable to attend.
21. "I was in a hell-hole... I can't get a ruling from the City and I can't get a ruling from AMVIC."
22. "I am selling cars without an AMVIC License... I have to... otherwise, I'll go out of business."
23. "I realize that's the law, but I don't agree with it."
24. "If I'm operating without a license, why am I still required to remit \$6/vehicle to AMVIC?"
25. "If I shut the business down, I'm facing a \$200,000 lawsuit by the landlord".
26. "I've done nothing wrong... I'm willing to pay for the license... I'm between a rock and a hard place."
27. "Most of my business is wholesale but I need retail to survive."
28. "We're operating in accordance with the Fair Trading Act."
29. "A license is a small piece of paper... not having one ought not preclude us from acting fairly."
30. "I'm asking AMVIC to give us a temporary license until the end of the year."
31. Northpark applied for and received an auction license, but decided not to proceed with auctions. That license was allowed to expire.

32. "The City of Edmonton has said nothing... that's tacit approval of our operations."
33. "We've been operating at this location since February 2012."
34. "We're not hurting the public by selling vehicles."
35. "Why destroy a business over a little piece of paper?"
36. "The City sold vehicles from that site by auction for 30 years."
37. "I can sell heavy vehicles there but not a Prius... Why?"
38. "We're continuing to work with the City on zoning."
39. Mr. LaGrange advised that he's engaged an agent to solicit the assistance of a member or members of City Council to work through these issues.

**Ted Trowsse (Northpark General Manager) Evidence Included:**

1. "There's no difference from selling heavy trucks to selling cars... the impact on roads and neighbors is the same."
2. "There are other dealers retailing/wholesaling under IM (Medium Industrial) zoning... the City says they were grandfathered in... that the zoning rules have changed."
3. "The material on the City's website re. zoning is not intuitive... why should you have to hire a lawyer for this?"
4. "We got something from the City saying a license would issue.... Then they said they were wrong."
5. "Why not give them an interim license until the lease runs out?"
6. "We're looking for other space, but nothing suitable is available without spending millions of dollars."
7. "There's an easy fix for everyone... issue an interim license."
8. "There are other dealers in the area selling cars."
9. "There are wholesale licensees operating from their homes... they're buying at dealer auctions and selling to dealers or selling privately... they're really curbers... buying from auctions and selling from a house as though they were private vehicles."

**On Cross examination by counsel for the Director, Mr. LaGrange acknowledged the following:**

1. The owner of the current Northpark location, Cliff's Towing (Northpark's landlord), filed a Land Development Application on or about December 14, 2012.
2. Cliff's Towing withdrew the Land Development Application in April 2013 because, among other reasons, they didn't want to spend the money performing an environmental site assessment.
3. He's aware that, according to the Fair Trading Act, no person may be engaged in a designated business without a license.
4. He's aware that since on or about February 1, 2012 he's been operating his business in violation of the Fair Trading Act, the City of Edmonton zoning bylaws and AMVIC regulations.
5. On January 31, 2013, he signed an AMVIC form – Activity Removal or Business Closure Request – stating that at that date Northpark did not "sell, wholesale, agent/broker, lease or consign vehicles or towable recreational vehicles" knowing that the statement was false.

**On behalf of the Director, Ceilidh Corcoran's (City of Edmonton Planning and Enforcement Supervisor) Evidence Included:**

1. Her role includes enforcement of City of Edmonton Zoning Bylaw 12800.
2. Without a development permit, no building permit or business license can issue.
3. Development permits go with the land.

4. If you apply for a development permit and it's refused, if what you're proposing is a permitted or discretionary use, you can appeal to the Subdivision and Development Appeal Board ("SDAB").
5. The SDAB does not have authority to add uses other than what is prescribed as permitted or discretionary.
6. Any proposed new uses outside of current zoning have to be approved by City Council.
7. For any discretionary uses, neighbor approval is typically sought.
8. If an activity is occurring that is neither permitted nor discretionary, that activity must cease or the property needs to be rezoned.
9. Anyone can go to [www.edmonton.ca](http://www.edmonton.ca) to input an address to find the current zoning.
10. Northpark's Current Location has been zoned Medium Industrial for quite some time.
11. On the City's website, you can find the permitted uses for each class of zoning.
12. Simply click on the hyperlink and that brings you to the definition of each class of activity.
13. Enforcement activities are always directed to the property owner, not the tenant.
14. Cliff's Towing has owned the property where Northpark currently operates since 1987.
15. Corcoran received an initial complaint from the City's Business Licensing department on May 25, 2012 that the property where Northpark is operating was conducting business without an approved development permit.
16. Corcoran attended the site on June 11, 2012 and observed retail sales activity there contrary to the approved zoning.
17. Corcoran issued a Violation Notice to Cliff's Towing on June 26, 2012 advising as follows:

"RE: VIOLATION NOTICE  
 11480 – 156 STREET NW  
 Plan 6097AH Blk 2  
 IM (Medium Industrial Zone)

An inspection of the above noted property by this Department revealed that Automotive and Recreational Vehicle Sales are occurring at the property for which, according to our records, no development permit has been issued.

The property is zoned IM (Medium Industrial Zone) and Automotive and Recreational Vehicle Sales are neither a permitted no discretionary use within that zone therefor a Development Permit cannot be obtained.

You must discontinue the Automotive and Recreational Vehicle Sales operation. If some action has not been taken to rectify the situation by August 15, 2012, the City of Edmonton will issue fines and/or pursue enforcement under the provisions of the Municipal Government Act, R.S.A 2000...."

18. If a property owner is working towards compliance, we won't necessarily proceed heavily to enforcement.
19. Northpark came into City offices on May 25, 2012 looking for permits. It soon became apparent that a development permit could not issue without rezoning. Northpark was advised of the need for rezoning to continue its light vehicle sales activity.
20. A Land Development Application ("LDA") (the first stage of rezoning) had been received by the City in respect to the subject property. The City required an environmental site assessment.
21. On April 25, 2013, the applicant (on behalf of Cliff's Towing) called the City and requested closure of the LDA.
22. Corcoran advises that she only became aware of the closure of the LDA on July 9, 2013.

23. With the closure of the LDA and no apparent steps being taken by the property owner towards compliance, enforcement action will proceed.
24. Corcoran advises that without a development permit or rezoning, members of City Council have no ability to override the Zoning Bylaw.

On behalf of the Director, Bradley Emms' (AMVIC Director of Licensing) Evidence Included:

1. The process for issuing an Automotive Business License includes the following:
  - o Submission of application fee
  - o Submission of documents evidencing municipal approval
  - o Submission of corporate registration documents
  - o Review of sales person licenses
2. If a licensee changes locations, we typically contact the City to see if there is land use approval.
3. We don't issue licenses unless the activity is approved by the municipality.
4. AMVIC received a change of address request from Northpark on May 1, 2012.
5. On May 7, 2012 AMVIC sent Northpark a "First and Final Notice" advising that their business license renewal had been received but cannot be processed for reasons including the following: "Copy of current city/town business license, or Municipal Permit for use, or letter from municipality indicating their approval for your business to carry out the activities applied for and from the location indicated on your application."
6. With no approval from the City, an AMVIC license can't issue.
7. On March 5, 2013, Mr. LaGrange contacted AMVIC and advised that the City of Edmonton and Service Alberta had granted a "stay" to operate his retail business until zoning is straightened out. Mr. LaGrange asked for a "stay" from AMVIC in the form of a temporary license to sell retail. AMVIC advised that they are unaware of any stay and that they won't issue a retail license until there is compliance with the Automotive Business Regulation.
8. A license was granted for repairs/service, but not for light vehicle sales.
9. The sales licensing was on hold pending land-use approval.

On behalf of the Director, Rick Thiessen's (AMVIC Investigator) Evidence Included:

1. Handles consumer complaints.
2. Monitors licensed or unlicensed businesses.
3. Northpark is located in his territory.
4. Dennis LaGrange was aware of the need for re-zoning Northpark's Current Location as early as May, 2012.
5. When businesses are in an appeal process or trying to get licensed/zoned, no enforcement action by AMVIC is typically taken.
6. Mr. Thiessen followed up with Northpark after Northpark's appeal to the SDAB was released on or about October 25, 2012. The SDAB approved the Current Location for vehicle and equipment repair, for heavy vehicle/equipment sales and rentals and for temporary storage. The SDAB did not approve the Current Location for light automotive and minor recreation vehicle sales/rentals.
7. On December 5, 2012, AMVIC issued a letter to Northpark advising that Northpark is operating a used car lot at the Current Location with City of Edmonton approval and without AMVIC approval. By that same letter, AMVIC invited Northpark to a meeting to discuss the issues before a final decision is made.
8. His and AMVIC's approach is generally to give licensees lots of latitude. If they cooperate, AMVIC will cooperate.

9. There was a concern that Northpark had applied for an auction license for the Current Location with no intention of operating an auction.

## **NORTHPARK'S ARGUMENTS**

In summarizing Northpark's position, Mr. LaGrange stated:

1. He has not hidden anything.
2. He answered honestly that he was selling cars.
3. He acknowledges that he's breaking the law.
4. He says a lot of people break the law when in desperate need.
5. AMVIC has been reasonable in this matter. The City has not been reasonable. The City has sat on their hands and done nothing.
6. The City initially said pay us \$40 and we'll give you a license.
7. The City has not shut them down yet. The City wants us to be compliant, but suggested it was okay to proceed until rezoning/licensing issue resolved. In his view, that was "tacit approval" of Northpark operating as it has been. He raises an estoppel argument, suggesting the City, by its conduct, has lost the opportunity to take issue with the lack of proper zoning.
8. He is asking for an interim license until rezoning is issued.
9. Northpark has 540 days (the time left in their current lease with Cliff's Towing) to find new premises.
10. Wholesale sales represent about 75% of his business; retail sales represent the other 25%. Northpark needs both to survive.
11. He's looking for mercy until the lease runs out.
12. He can't afford the costs associated with a rezoning application.
13. Nobody has died or been hurt in the past 1.5 years with Northpark operating without a license.
14. He says AMVIC has every right to issue a license notwithstanding there's no City license.
15. If the City of Edmonton pursues enforcement action against Cliff's Towing, maybe Cliff's Towing will pursue the rezoning application or, alternatively, let Northpark out of their lease.

## **THE DIRECTOR'S ARGUMENTS**

In summarizing AMVIC's position, Ms. Stevenson stated:

1. The decision of the Director was communicated to Northpark on December 18, 2012.
2. The Director's jurisdiction with respect to automotive business licenses is found in Section 127 of the Fair Trading Act.
3. Northpark has variously provided false information, misrepresented the facts and contravened the Fair Trading Act and regulations.
4. Section 104 of the Fair Trading Act states: "*No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.*"
5. Section 4 of the Automotive Business Regulation states: *1) The Director may refuse to issue or to renew a licence to an applicant if*  
*(a) the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the automotive business to be operated under the licence;*
6. The Appellant concedes they're in breach.

7. Northpark believe themselves to be trapped in a bureaucratic nightmare not of their own doing. The situation is everyone's fault but theirs.
8. Northpark chose to relocate in February 2012.
9. Northpark appear to subscribe to the adage that it's easier to seek forgiveness rather than to ask for permission.
10. Northpark did little or no due diligence prior to leasing new space and relocating. They didn't contact the City to ask about zoning and didn't contact AMVIC to ask about licensing.
11. Mr. LaGrange says he made extensive due diligence efforts but concedes he relied on a real estate agent's indication that the Current Location was properly zoned.
12. Mr. LaGrange's estoppel argument isn't viable. The City of Edmonton told Northpark in February 2012 that they need to see Northpark's AMVIC license before considering a business license.
13. Mr. LaGrange is in this situation because he didn't do the due diligence required.
14. AMVIC and the City of Edmonton have been very patient with Northpark. They've independently held enforcement in abeyance pending determination of the zoning issue.
15. This is a zoning issue. Used car sales is not a permitted or discretionary use at the Current Location. The issue can only be addressed by rezoning.
16. We now know that there have been no attempts to rezone since April 2013.
17. Northpark has been stalling since at least November 2012.
18. Northpark misrepresented to the Director that rezoning was close to happening.
19. In fact, the only efforts undertaken by Northpark appears to be lobbying City Councilors, who have no power to over-ride existing zoning bylaws in any event.
20. There is a real issue of governability of this Appellant.
21. AMVIC has a duty to regulate its members in the public interest.
22. Granting a license to or further accommodating Northpark sends the wrong message to every other licensee.

## **ANALYSIS AND CONCLUSIONS**

Under Edmonton's Zoning Bylaw 12800, the Current Location is zoned 420 (IM) Medium Industrial Zone. Under that zoning, permitted uses include "Vehicle and Equipment Sales/Rentals". This zoning allows for the

"...sale or rental of heavy vehicles, machinery or mechanical equipment typically used in building, roadway, pipeline, oilfield and mining construction, manufacturing, assembling and processing operations and agricultural production. This use class does not include Truck and Mobile Home Sales/Rentals." (see [http://webdocs.edmonton.ca/InfraPlan/zoningbylaw/ZoningBylaw/Part2/Industrial/420\\_\(I\\_M\)\\_Medium\\_Industrial\\_Zone.htm](http://webdocs.edmonton.ca/InfraPlan/zoningbylaw/ZoningBylaw/Part2/Industrial/420_(I_M)_Medium_Industrial_Zone.htm))

The sale or rental of light vehicles (under 4,000 kg) is neither a permitted nor a discretionary use at the Current Location.

Northpark acknowledges that it has been selling light vehicles at the Current Location since February 1, 2012 without having obtained either an appropriate AMVIC License or a City of Edmonton Business License.

Northpark has attempted to secure both AMVIC and City licenses without success. The City won't issue a Business License because the Current Location is not zoned for light vehicle sales and because AMVIC has not issued a license permitting light vehicle sales. AMVIC won't issue a license for retail/wholesale light vehicle sales without evidence of a City Business License.

Mr. LaGrange and Mr. Trowsse, on behalf of Northpark, attempted at various times (including letters dated October 25, 2012, December 10, 2012 and December 14, 2012) to convince AMVIC that rezoning was underway and/or imminent. Based on the evidence before this appeal board, there is little to no foundation for those representations. The statements appear to be in an attempt to convince AMVIC to issue a retail/wholesale light vehicle sales license and/or to delay AMVIC from pursuing any enforcement activity.

Mr. LaGrange variously states:

- "I have always complied with the law."
- "I know Northpark needs a license to operate."
- "I was aware in March 2012 that the Current Location was not properly zoned for car sales."
- "I am selling cars without an AMVIC License."
- "I realize that's the law, but I don't agree with it."
- "A license is a small piece of paper... not having one ought not preclude us from acting fairly."

Notwithstanding the various representations and rhetoric of Northpark, no material efforts appear to have been undertaken by Northpark either before or after relocating to the Current Location to (i) ensure appropriate zoning and licenses were in place; or (ii) once it was determined that appropriate zoning was not in place, to pursue appropriate zoning.

There had been some preliminary efforts by Cliff's Towing to pursue rezoning of the Current Location by filing an LDA, but according to the evidence presented to this appeal board, those efforts were abandoned on April 25, 2013 and no current efforts are underway to pursue rezoning.

This appeal board finds Northpark's evidence generally not credible and Northpark's arguments wholly unconvincing.

As argued by the Director, fundamentally, this is a zoning issue. Light vehicle sales are not a permitted or discretionary use at the Current Location. The issue can only be addressed by rezoning.

Despite Northpark's various bombastic statements blaming others for their predicament (including the City of Edmonton, Northpark's real estate agent, and AMVIC), the truth is that Northpark has only itself to blame for not taking the time prior to relocating to the Current Location to understand the applicable zoning and licensing laws, bylaws and regulations (the "Rules"). The Rules are not uncomplicated which is why it's important for any business or any citizen to undertake appropriate due diligence, to do their homework, to ask questions, to seek assistance from professionals where prudent, and to obtain approvals/licenses/zoning/etc. (where possible) before making commitments or commencing activities requiring those approvals/licenses/zoning/etc.. Northpark relocated its operations to the Current Location and began operating its vehicle sales business without having the required zoning and City of Edmonton and AMVIC licenses in hand. Northpark ought to have recognized the risks/consequences of doing so.

Notwithstanding Northpark's assertion that they were "maliciously misled" by the City of Edmonton, this appeal board finds that the City of Edmonton has acted reasonably and appropriately in the circumstances. The City's February 9, 2012 fax to Northpark was clear – no business license would be issued for the Current Location unless/until an AMVIC license was obtained.

AMVIC has acted reasonably and appropriately in the circumstances.

Section 4(1) of the Automotive Business Regulation provides:

*The Director may refuse to issue or to renew a licence to an applicant if*

- (a) the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the automotive business to be operated under the licence;*

Section 104(1) of the Fair Trading Act provides:

*No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.*

Section 127 of the Fair Trading Act provides:

*The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:*

- (b) the applicant or licensee or any of its officers or employees*

*...*

- (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,...*

- (v.1) fails to comply with any other legislation that may be applicable,...*

The evidence is clear that Northpark has been selling light vehicles from the Current Location since February 1, 2012 without the appropriate: (i) zoning; (ii) City business license; or (iii) AMVIC license knowing that it is unlawful to do so.

Moreover, Northpark has either knowingly misled or demonstrated a careless disregard for the truth by variously suggesting to AMVIC that (i) proper zoning was imminent; (ii) that the City and Service Alberta had granted a "stay" to operate the retail business until zoning was straightened out; and (iii) by signing AMVIC's "Activity Removal or Business Closure Request" on January 31, 2013 stating that at that date Northpark did not "sell, wholesale, agent broker, lease or consign vehicles or towable recreational vehicles" knowing that statement to be false.

While the Director does have discretion to issue or renew an automotive business license depending on the specific facts and circumstances of an applicant, in the present case, given the conduct of the Appellant, including its knowing disregard for the Rules and its careless disregard for the truth, this appeal board finds no compelling reason to interfere with the Director's decision in this case.

The Director's position is simply that AMVIC ought not issue an automotive business license for light vehicle sales to a party which does not have the required municipal license to operate. Doing so in this case would, effectively, give Northpark permission to operate a light vehicle

sales business at the Current Location without appropriate zoning and without a City business license. That would be inconsistent with the above referenced provisions of the Fair Trading Act and the Automotive Business Regulation.

## **DECISION**

For the above reasons, the December 18, 2012 decision of the Director not to issue an automotive business license for retail/wholesale vehicle sales to Northpark is confirmed. No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 8<sup>th</sup> day of August, 2013 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern (Chair)  
Hilda Lupul  
Caren M.L. Mueller