Staff Report
City of Doraville, Georgia
Planning and Zoning

Public Hearing:	MCC public hearing scheduled for December 13, 2010 @ 6:30 p.m.
Applicant:	Kathryn M. Zickert, Attorney, Smith, Gambrell & Russell, LLP, for Garrett Andrew Bethonod/Bethonod and Associates, Inc., d.b.a. Instant Car Title Loans
Request:	Conditional Use per Ordinance 2010-24 on property zoned C-2 for a pawn shop (title pawn). No variances were requested or advertised.
Location:	Parcel ID 18-311-0-008, 5368-B Buford Highway - a multi-tenant facility.
Tract Size:	Approximately 0.50 +/- acres
History:	Item advertised per City Council zoning decision and directive of August 30, 2010, per C-2 text amendment to allow consideration of the item per CUP criteria.
	NOTE: Petition received by the City on November 8, 2010.

CU Standards of Review

(1) ***The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.*** False. Although the site is located on a C-2 highway commercial corridor, the site (as much of Buford Highway) does not personify the vision of the Plan. In staff's view, sites zoned C-2 would not generally be ideal for pawn activities. Perhaps this is one of the "Quality Community Objectives" addressed in terms of "appropriate business" illuminated on Page 13 of the Plan. The Plan does not illustrate any further what this appropriate mix would be other than to describe recommended uses of commercial; limited office/professional; and public/institutional.

To Quote the Doraville Comp Plan 2005-2025 (Page 12): "There are two primary commercial corridors in Doraville: Buford Highway and Peachtree Industrial Boulevard. Some of these areas are declining and need redevelopment to be vital in the future. Comprised mainly of unattractive, vacant, or under-utilized strip shopping centers, these areas are characterized by auto-oriented design that creates a high degree of access for vehicular traffic. Superfluous on-site parking and lack of preserved open space typify these areas."

(2) ***The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.*** Item cannot be determined from available information. Although the Applicant is licensed by the State of Georgia as a used motor vehicle dealer at the subject address, the Applicant does not have a local occupational tax placard for this business nor would the operation of that type of business be allowed within C-2. In fact, a used motor vehicle dealer is specifically prohibited within C-2 by virtue of Ordinance 2008-33.

(3) ***The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent developments and neighborhoods.*** Item cannot be determined from available information.

(4) ***The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.*** True. The site does not affect any residential neighborhood due to its obvious placement within a commercial matrix.

(5) ***The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.*** False. There are no neighborhood streets which are directly affected by the site due to a location on a GDOT right-of-way (Buford Highway) and its curb-cuts being only onto Buford Highway.

(6) ***The proposed use incorporates features to minimize adverse affects, including visual impacts, of the proposed conditional use on adjacent properties; and the proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining developments and neighborhoods.*** Item cannot be determined from available information. No variances were requested or advertised.

(7) ***The proposed use is based on a site plan in conformity with all space limits, buffers, parking and loading provisions, and other provisions of this article.*** Space limits, true, but only to the extent the property could be determined to be legally non-conforming by virtue of Code changes to the dimensional requirements of C-2 as per Ordinance 2008-33. Buffers are not applicable given the property does not abut upon any residential zoned land. Parking and loading are indeterminate in terms of compliance given the incomplete site plan exhibit submitted with the application to the City and recent code enforcement/QOL action on the property resulting from a parking lot restriping without City approval as determined by the City Building Inspector. As of November 23, 2010, vehicles were parking on the site in areas which were not striped as parking spaces in clear violation of Article XII and City Code.

Two (2) loading/unloading spaces are required if classified as “shopping center.” Loading/unloading spaces must be 10 feet by 30 feet with 14 feet of overhead clearance. No loading/unloading spaces are required if classified as office.

The principal structure on the site is 6,308 square feet. Based on the criterion of one (1) parking space for every 250 square feet of gross floor area for multi-tenant shopping center, 6,308/250 = 26 parking spaces are required. If we calculate based on an office criterion

rather than a shopping center criterion, the number of required parking spaces drops by four (4) parking spaces to 22 parking spaces (6,308/300 = 22).

Up to 25 parking spaces requires one (1) handicapped space. From 26 spaces to 50 spaces requires two (2) handicapped spaces.

Be advised, there may be archival evidence from the Mayor's office which suggests an accessory structure to the rear of the property encroaches onto City of Doraville property/City pool complex. This accessory structure is not shown on the site plan that has been presented to the City with the application.

(8) ***The proposed use applicant has agreed to any specific limitations or conditions necessary to protect the public interest and assure the continued beneficial use and enjoyment of nearby properties or that no special limitations are necessary to protect the public***. Item cannot be determined from available information due to no mediation as yet with the City Council. The subject zoning case has active litigation against the City.

Recommendation:

Conditional Use:

Based upon the standards of review contained herein with such actions warranted by past staffing errors which has resulted in a proliferation of these business types within C-2, the conflicting approach of the City regulatory codes relative to the zoning code(s) – at least to the extent that pawn regulation was in place without attendant zoning since 1981, the Department has **No Recommendation.**

The previous zoning ordinance did not allow pawn shops as a permitted or a conditional use within any zoning district and the previous Staff had no authority to interpret otherwise. There is no archival evidence which suggests the business was allowed pursuant to a Zoning Procedures Act hearing conducted by the City Council according to a general finding of "other uses as may be determined by the City Council to be similar and compatible with the above permitted uses." Thus, what (if any) vesting this business may have is suspect in light of its failure to file a timely CUP application per the August 30, 2010, directive of the City Council and recent pawn regulatory code amendments which limit pawn establishments to four (4) pawn shops per 10,000 population. The CUP application was filed subsequent to pending litigation.

As of November 14, 2010, the City has approximately double the allowable number of pawn shops within its corporate limits that the new regulatory codes provide.

The original occupational placard was issued apparently in 1991. The initial tenure of the City Planner was September 15, 2008. The City Planner or his staff does not, nor is not responsible, for the issuance of occupational placards. The City Planner assists the City Clerk's office as a review agent with the Occupational Tax Clerk (employee of the City Clerk) to enforce the City zoning ordinance. The case highlights the critical need for proper implementation of City Codes and the potential number of other businesses who may also be operating pawn establishments without proper licensure from the City. Staff is unaware if any regulatory action has been engaged by DPD/QOL given the subject business has been operating since December 31, 2009, without an occupational tax placard.

The site as a CUP would be governed by Ordinance 2009-28 with no variations expressed or implied.

The approval of the CUP does not warrant compliance with the City regulatory Codes and is just the first of many requirements (including fees) to obtain occupational and pawn shop licensure which is in the review capacity of the City Clerk's Office and the Doraville Police Department.