

MINUTES OF THE DEVELOPMENT APPEAL BOARD
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Tuesday, January 24, 2017

BOARD MEMBERS PRESENT

Barbara McNeil	Public Representative (Chairperson)
Stavros Karlos	Council Representative
Christopher Wong	Public Representative (Vice-Chairperson)
Corrie DiManno	Council Representative
Sheila Luey	Parks Canada Representative
Kendra VanDyk	Parks Canada Representative

BOARD MEMBERS ABSENT

Barry Kelly	Public Representative
Dak Kerr	Public Representative
David Bayne	Public Representative

ADMINISTRATION PRESENT

Randall McKay	Manager of Planning and Development
Tara Johnston-Lee	Secretary to the Development Appeal Board
David Michaels	Planner
Kerry MacInnis	Administrative Assistant Planning (Recording Secretary)

1.0 CALL TO ORDER

The Chairperson to the Development Appeal Board called the meeting to order at 9:06a.m.

4.0 APPEALS

Discussion continued from the January 16, 2017 DAB Meeting.

Anderson requested from the Board that the Board be directed by the prior decision of DAB on the matter of 3rd floor development. As per Anderson's previous submission and case file (tab 6, paragraph 27 and 33) the facts of today are no different from the previous submission, thus the decision made previously should be followed. Anderson also requested that their previous submission from ISL be deleted from the record (Exhibit 8).

Town of Banff - McNaughton

Two issues to address today:

- Interpretation and submission of the Provision in the National Park Plan with reference to the anticipated population of 8, 000 (TOB submission package material as attached in the agenda package on pages 134, 149, 152, 155 references) Page 152 *Parks Canada is accountable for ensuring...* when this proposed development was circulated to Parks, they had no concerns with the development hence no concern with the permanent population. Page 174 reference to the

Minutes approved by: _____

permanent population plan approaching 8,000 and then on page 216 states population is approximately 7,000. The point being that population is a fluid concept and the national plan isn't consistent. Page 203 – there is no mention of population cap.

Page 220 – it is anticipated that the permanent population (Federal Census) not to exceed 8,000 – that's the Federal Census, so no other census should be considered. Bullet - "anticipated" means you give consideration to this provision but it is not a prescriptive mandate for MPC or DAB. Commercial growth is to be measured (page 288), no mention of population to be mandated.

The National Plan has to be interrupted as a whole, the references to the anticipated population is to be considered not prescriptive.

Page 402 – Parks Canada response to this proposed development *"no conflict with the Act nor the Plan"*.

Housing is already in place for this development and has been in place since 2000. No new staff are required for this proposed development.

Shores submission that DAB must consider each proposed development and how it impacts the population, this can be taken into account but as a consideration only. Population can't be tracked as many of those who work in Banff live elsewhere (Canmore, etc).

- Improper sub delegation –Condition 1 sub (b) – page 110 – Incorporation Agreement (article 6 – sec 6.2.1) – environmental assessment review – Parks Canada is deemed to be the governing body of the environmental assessment reviewed and deemed to be part of the development permit. Exhibit 11.

This condition has been satisfied as per the development permit (page 334 – 1(b)). As well as condition 3(c). It is pointless to have to repeat these conditions as the conditions imposed are consistent with the Incorporation Agreement. Thus, not an improper sub delegation.

Page 92 – Section 4.15.8 – does not limit the board in its decision making abilities.

Recess called from 10:10-10:20a.m.
Meeting resumed at 10:25a.m.

- Questions from the Board to Ms. McNaughton/TOB
 - Karlos – municipal census from Shores, how should we consider this?
 - Federal Census is to be considered with respect to the National Plan and the Municipal Census is in reference with the Community Plan. Municipal census information is not binding but information for you to consider. The Federal Census is the information that you must consider.

Are there any members of the public that are in favor of the appeal?

None were given.

Are there any members of the public against the appeal?

Exhibit 12 submission – Mr. Treutler submission.

- Deborah Babiuk Gibson – Council with Justice Canada (in house council for Parks Canada) requested to speak with respect to the National Parks Management Plan.
 - Shores – objects to Ms. Gibson to speak at today’s meeting because of an apprehension of bias.
 - Ms. Babiuk Gibson withdrew from making submissions.
- Arctos & Bird Rebuttal – Shores
Page AB84 – 5.15 Incorporation Agreement every statutory plan and LUB and every action taken shall conform to the Banff National Parks Management Plan. This is the guiding instrument.

Banff National Plan – page AB228... AB232 – there is no inconsistency here, you comply with the stricter. The Town’s permanent population is intended not to exceed 8,000. Page AB233 – Objective is commercial development is proactively managed to minimize population growth. Page AB235 – key action – anticipated that the permanent population won’t exceed 8,000.

The Municipal Census shows that you have already exceeded the population of 8,000. You must act now to be proactive here. You have no accumulative analysis of any addressing of population limits.

Page AB238 - Court of Appeals – paragraph 4 – everything must comply with the Parks Management Plan. Paragraph 11 and 13 – please note.

DAB is empowered by the Incorporation Agreement.

3 things that must be considered in all decisions:

- Boundary in Banff (cant’ grow)
- Commercial growth cap (can’t grow)
- Permanent resident population – DAB can control this, you must be proactive in managing population growth.

DAB has not heard any evidence that the staff units that Banff Park Lodge have had since 2001, have remained empty (or on standing by) to support this new development?

Sub delegation Question

The way the condition is imposed is inconsistent with the Land Use Bylaw. (Exhibit 8 from January 16, 2017 meeting minutes) – An environmental assessment is required. Although an application has been made, it hasn't been ruled upon. There is no completed/approved form from Parks Canada on this development.

Question – is this application even appealable (as indicated by Anderson)?

Section 4.5.3 of LUB – permitted uses and discretionary uses – all provisions must conform in all aspects – there were variances in this application (subdivision, disregard of the obligation to proactively manage the population growth). Thus, this application is appealable.

In response to Mr. Marshall's presentation:

- DAB needs to follow the set of rules that are in place and there is a limit on growth in Banff.
- Conditions for approval – concern with the environmental assessment
- Additional conditions that are recommended/proposed – alley curb to be moved back 18" – Marshall/Anderson confirmed the curb will be a flat curb. We ask that this concession be reflected in the condition of approval.
- Improvements are still required in the lane. The WATT study goes to functionality but more is required (loading/unloading). Between the TOB and the developer, we ask that they work together to improve the public realm.
- Add a condition of approval that the loading zone for Melissa's be held and the operator of Melissa's be compelled to use this loading zone.

Recess called at 11:19a.m. to return at 11:30a.m.

Meeting resumed at 11:32a.m.

- Questions from the Board to Shores

Luey – accumulative impact analysis – what reference supports this?

- Shores – proactively take into account the population growth thus, accumulative impact analysis.

Luey – what makes something a legislative instrument?

- Shores – National Parks Act is the overriding legislative instrument. Incorporation Agreement gives binding authority that every "act" has to be in compliance.

Murphy – how should we look at the previous decision on 3rd story development?

- Shores – if the same issue becomes before you, facts for facts; you should have regard for what you have done in the past. But, you could come to a different decision as you must distinguish your case.

- McNaughton rebuttal regarding the Environmental Assessment – the Town sees the model class screening report as an environmental assessment for all the lands in the town. The Town asks if there are any mitigating factors of this assessment for this proposed development and are copied on such.

Murphy – Section 4.8 and 4.15.8 of the LUB - the environmental assessment has been done for every developed lands within the Town. There are mitigating measures in these assessments. Through the environmental assessment and model class screening reports, mitigating measures are indicated on the conditions of approval. Are all conditions of approval the same for all developments?

Lunch break called at 11:50a.m. to return at 12:50p.m.

Meeting resumed at 1:00p.m.

McKay response – Yes, condition of approval on page 413 of the Town of Banff submission package (condition 3(c)).

- Board Question
Anderson had stated previously that the environmental assessment may have been back from Parks Canada, do you have this?

Anderson – environmental assessment was submitted and received by Parks Canada. Parks has indicated that they require more information so, no, we don't have the completed package back from Parks as of yet.

- Anderson Update Comments regarding Staff Levels and Staff Accommodation
 - 136 beds, typically occupied at 80% thus, there are 26 staff accommodation units still available
 - In the 23 years they have operated their businesses, they have always had a surplus of staff accommodation rooms.
 - Currently 7 employees at the Homestead, will require 4 additional employees to support the new development.

Karlos – do all Fuji employees reside in the Town of Banff?

Anderson – no, not all employees reside in the Town of Banff

- Shores response
 - Staff accommodation units don't resolve the population growth concern we have
 - Different operations may operate differently
 - LUB 8.19 imposes specific requirements for staff

- Environmental Assessment Issue – more complex issue as per section 4.15.8 of the LUB. Model Class Screening is an Environmental Assessment. It is suggested that the Environmental Assessment supersedes the Development Permit.
- Banff National Parks Mgmt Plan – page 6 – CEAA paragraph. The CEAA must be done in advance of any development permit being issued. www.ceaa.gc.ca
- You have to have the environmental assessment done before you get your development permit.
- Exhibit #13 and #14

- Anderson – Conditions of Approval (appeal)
 - General Conditions – when they are satisfied, not satisfied and when they expire
 - 4.8 of the Bylaw, MGA – sections 4.10, 4.11, 4.13 and 6
 - You can have a development approved, start constructions but there may/will be conditions that will not be met prior to getting the development in the ground.
 - Subdivision – you have a stated period of time to register with Land Titles Office – this has nothing to do with whether all conditions of the development have been met or not.
 - Melissa’s – permitted use with 38 conditions of approval. We ask that no further conditions be placed on this (future change in ownership). We ask that condition 2(a) be deleted. If EA precondition, move #3(c) or receive report.
 - Homestead Inn – hotel is permitted with 45 conditions of approval. We ask for no further conditions, delete #2(a) and #2(b) and if EA precondition, move #3(c) or receive report.
 - We agree to a development permit condition with respect to loading on the Homestead site

- Transportation Expert with respect to loading and laneway functioning – Bruce Nelligan
 - It’s in everyone’s best interest to ensure proper laneway functioning.

- Mr. Bill Marshall – architect with respect to the dormer condition
 - Exhibit #15 – Banff Design Guidelines Dormer Options A and B –we ask for condition #2(b) to be deleted from the conditions of approval as we want the design to stay as is.

Break at 2:00pm, to return at 2:15p.m.
Meeting resumed at 2:25p.m.

- Board Question for Anderson
Karlos – it has been suggested that a Model Class Screen Report is an Environmental Assessment
Anderson – yes, the Model Class Screening Report meets the requirement in the Land Use Bylaw

Minutes approved by: _____

- Shores Presentation
 - Consolidation of Lease – condition 2(a)
 - Anderson said you should remove this condition
 - We disagree – this shouldn't be removed because it is an invalid consolidation, we also have a jurisdiction review on this issue. The condition should remain.
 - What to do with conditions 1(b) and 3(a)? Environmental Assessment is a precondition before a development permit can be issued. It can't be an after affect. I agree with Mr. Murphy that the board can't adjourn the meeting to discuss this matter further. Anderson can choose to close the hearing or not close the hearing but can't adjourn the hearing. This conditions should definitely stay in place.
 - Mr. Peter Poole – addressing the dormer condition and laneway conditions
 - Alley concerns (Exhibit #16 as attached in these meeting minutes). Improvements to the alley for the public realm is required; set back Melissa's building 18", set back curbing for the Homestead and Town to negotiate with the Shell and the Scout Hall to improve pinch points in the alley.
 - Dormers – is the Homestead asking for a variance with these dormers? It's a large mass of a building – the bigger the building, the more the Banff Design Guidelines must be adhered to.

- Board Question for Shores

Luey – Consolidation; subject of the Federal Court appeal?

Shores – I'm not suggested you need to engage in debating this Federal Court Appeal. I suggest that you shouldn't change it but leave the condition in as it stands today.

Luey – EA; in the Incorporation Agreement (sec 6) it states that the Federal Minister is responsible for Environmental Assessment. Sec 6.2.2 “shall be deemed to be a condition of development”. Help me understand how something that is deemed to be a condition of development – what does that mean?

Shores – LUB 4.5.18 – provision that stated that you need to have the EA in place before you approve the permit.

- Until you have the assessment, you can't issue the permit.
- If the minister identifies conditions as per the EA, it may put these as a condition of development.
- When you have the assessment you may issue the permit with conditions.
- Section 4.8.1 – the development authority may impose conditions as per the EA. Section 8.2.2 of the LUB – all development shall conform to the discretion of the development approving authority.

- McNaughton presentation
 - Guideline is defined in the LUB
 - The Town was satisfied that the objective of the design was met – the discretion of the development authority to approve the dormer
 - We agree that you can't close the hearing. Options are – adjourn to provide time for the applicant to provide the screening report to DAB or choose to not close the hearing as the DAB may not have all the information that you need to make an informed decision.

- Are there any member in favor of or opposed to the appeal?
No response from the public.

- Anderson
We request from DAB that if something more is required of us to meet 4.5.18, we would ask for an adjournment of today's hearing and limit the adjournment to the Environmental Assessment response from Parks Canada (recommendations, requirements or conditions). If required, we ask that the mitigated measures be put into the conditions of approval.

- Marshall (closing remarks)
With respect to the conditions of approval – the dormers. We can leave the condition in as is as this leaves us room to discuss the dormer condition further. We remove our request to remove this condition.

- Request for Adjournment (McNeil)
Shores response to this request – we have no objection to an adjournment in principle. Once materials come back to the DAB, we ask that we are given enough time to review these new materials. If an adjournment is granted, it should not be limited to just the Environmental Assessment materials. New materials may come forth (example: Federal Census).

Recess at 3:10p.m to 3:25p.m.
Meeting resumed at 3:28p.m.

- Request for Adjournment (McNeil)
As soon as additional material from Fuji is available, this information be distributed to all parties and identify specific target dates for the next hearing date. Hearing date TBA.

5.0 ADJOURNMENT

This hearing has been adjourned but will remain open until advised by Fuji Starlight Express.

The next regularly scheduled DAB hearing will be held on Thursday, February 23, 2017.

DAB17-10 Moved by McNeil to adjourn the meeting at 3:30p.m.

CARRIED

Barbara McNeil
Chairperson

Kerry MacInnis
Recording Secretary