

**MINUTES OF THE DEVELOPMENT APPEAL BOARD**  
**of the Town of Banff in the Province of Alberta**  
**Town Hall Council Chamber**  
**Thursday, June 7, 2018**

**BOARD MEMBERS PRESENT**

David Bayne	Public Representative (Chairperson)
Dak Kerr	Public Representative (Vice Chairperson)
Peter Eshenko	Public Representative
Karen Sorensen	Council Representative

**BOARD MEMBERS ABSENT**

Grant Canning	Council Representative
Doug Macnamara	Public Representative
Ray Horyn	Public Representative
Kendra Van Dyk	Parks Canada Representative
Sheila Luey	Parks Canada Representative

**ADMINISTRATION PRESENT**

Randall McKay	Director, Planning and Development and Secretary to DAB
Darren Enns	Manager, Development Services
Jennifer Laforest	Planner
Kerry MacInnis	Administrative Assistant Planning (Recording Secretary)

---

**1.0 CALL TO ORDER**

The Chair called the Thursday, June 7, 2018 Development Appeal Board meeting to order at 9:00a.m.

**2.0 APPROVAL OF AGENDA**

DAB18 - 20 Moved by Eshenko to approve the June 7, 2018 Development Appeal Board agenda as amended.

Add 6.1: New Business: Appeal #08-18 – 118 Otter Street – 17DP68. Request for an adjournment until Thursday, July 5, 2018

**CARRIED**

**3.0 ADOPTION OF PREVIOUS MEETING MINUTES**

DAB18 - 21 Moved by Sorensen to approve the minutes of the April 19, 2018 meeting of the Development Appeal Board as presented.

**CARRIED**

## 4.0 APPEALS

### 4.1. APPEAL #05-18

Appeal #05-18 – Appeal by applicant against a decision of the Development Officer to refuse to accept an application for a Bed and Breakfast Home at 138 Otter Street pursuant to Section 4.14.1 of the Land Use Bylaw which states that *when an application for a development permit is refused, another application for the same or a similar use on the same site shall not be submitted by the same or any other applicant until six months after the date of the decision to refuse has been made. A Development Officer shall have the discretion to waive the waiting period for the submission of a new development permit application for the same or similar use.*

#### Public Present Objecting to Any Board Member Hearing This Appeal

There were no objections from the public present to any board member hearing this appeal.

#### Declaration of Conflict of Interest by Board Members

Bayne declared a conflict of interest in hearing appeal #05-18. Bayne left the meeting at 9:06a.m.

#### Notification to Affected Neighbours and Media Announcement

Notice of the appeal hearing has been given to the appellants, the applicant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

#### Development Officer's Comments

Enns spoke to the written submissions included in this agenda package and made the following comments:

- What is being appealed here today is the waiting period for resubmission of the Bed and Breakfast application.
- Section 4.14.0 – resubmission interval
- Section 4.14.2 and 4.14.3
- DAB would interrupt the LUB as such – in rendering its decision, the Board takes into consideration the purposive and contextual approach to the interpretation of the Land Use Bylaw. DAB should take a more literal interpretation of the LUB.
- Page 18 of the agenda package is the letter that was sent to the applicant and provides the reasons why the resubmission wasn't accepted by planning and development.
- Page 33 of the agenda package is the appellant's four points as to why the resubmission should be accepted. Enns spoke to each point.
- November 4, 2018 would be the applicant's resubmission date as per planning and development
- If the resubmission six-month timeframe was waived by DAB, the applicant would resubmit an application to be brought to the July 11<sup>th</sup> MPC meeting and if no appeals were received, an approval could be granted in August.
- Planning's interpretation of section 4.14.0 is that the six-month resubmission time period must be adhered to.

Board Questions

Q. Why would there be this six month waiting period?

A. To allow for a cooling off period and not an easy decision to make in a small town; also to avoid the potential for constant reapplications.

Q. What is the rationale for the waiting period? DAB interpretation of section 14.4.0?

A. It is our belief that each of these points be taken literally.

Appellant Presentations

Kyla Conner, representing the appellants spoke to the written submission included in this agenda package and asked the board to provide clarity as to the intention of the six-month waiting period?

Those in Favour of the Appeal

Peter Christou, appellant, addressed the board speaking to the written submission included in this agenda package. Respectfully, asking the board to waive the six-month waiting period in order to secure this one bed and breakfast spot in this district.

Jon Whelan spoke in support of this appeal and that the board should grant both appeals to permit their reapplications and waive the six-month waiting period.

Jamie McVicar spoke in support of this appeal.

Board Questions

Q. With respect to applying and securing this BnB spot, how does that work?

A. Section 10.3.5 of the LUB speaks to this. It is first come first serve as to who applies for the available bed and breakfast spots in this LUB.

Q. When the DAB refused this application on May 4<sup>th</sup>, was the public notified?

A. Yes, neighbors were notified of the decision.

Those Opposed to the Appeal

None

Development Officer's Response

Enns briefly summarized his presentation.

Motion to Continue Discussion In-Camera

DAB18 - 22 Moved by Sorensen that the DAB move in camera at 9:44a.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

**CARRIED**

Motion to Leave In-Camera Discussion

DAB18 - 23 Moved by Eshenko to return to the public meeting at 10:04a.m.

**CARRIED**

Board Questions for Administration

Q. Does DAB have the permission to reduce the waiting period timeframe? And if so, can DAB make this decision case specific?

A. Section 4.14.0 – the board can “waive” or “non-waive” the resubmission timeframe.

Q. While there is an appeal, would that appeal have to be resolved before another bnb application was received in that land use district?

A. No, another site can submit a bnb application. There are two bnb’s available in this district.

Q. Is there any mechanism in place to hold a bnb business license while your appeal is pending?

A. No

Motion to Continue Discussion In-Camera

DAB18 - 24 Moved by Sorensen that the DAB move in camera at 10:08a.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

**CARRIED**

Motion to Leave In-Camera Discussion

DAB18 - 25 Moved by Eshenko to return to the public meeting at 10:28a.m.

**CARRIED**

Verbal Decision Announced

It is the decision of the Development Appeal Board to waive the six-month waiting period resubmission for 138 Otter Street Bed and Breakfast.

DAB18 - 26 Moved by Kerr to waive the six-month waiting period for bed and breakfast resubmission at 138 Otter Street - 03DP16.

**CARRIED**

Bayne returned to the hearing at 10:40a.m.

#### 4.2. **APPEAL #06-18**

Appeal #06-18 – Appeal by applicant against a decision of the Development Officer to refuse to accept an application for a Bed and Breakfast Home at 220 Bow Avenue pursuant to Section 4.14.1 of the Land Use Bylaw which states that *when an application for a development permit is refused, another application for the same or a similar use on the same site shall not be submitted by the same or any other applicant until six months after the date of the decision to refuse has been made. A Development Officer shall have the discretion to waive the waiting period for the submission of a new development permit application for the same or similar use.*

#### Public Present Objecting to Any Board Member Hearing This Appeal

There were no objections from the public present to any board member hearing this appeal.

#### Declaration of Conflict of Interest by Board Members

No conflict was declared.

#### Notification to Affected Neighbours and Media Announcement

Notice of the appeal hearing has been given to the appellants, the applicant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-3.

#### Development Officer's Comments

Enns spoke to written material that was included in this agenda package and made the following comments:

- What is being appealed here today is the waiting period for resubmission of the Bed and Breakfast application.
- Section 4.14.0 – resubmission interval
- Section 4.14.2
- The appellant states four points of their appeal (as included in this agenda package);
  - The development officer did waive the six month appeal period
  - Planning decisions are inconsistent with respect to this application
  - Allegations of prior misconduct are legally irrelevant
  - Such other grounds as may be raised on appeal

Minutes approved by: \_\_\_\_\_

### Board Questions

Q. When was this BnB asked to seize their operation?

A. MPC – March 14, 2018, the BnB was refused. September 15, 2018 would be the resubmission date.

Q. Page 124 of the agenda package – email from Michaels to the appellant stating that the application could be taken to MPC May 9<sup>th</sup>? Why now the application date of October 2018?

A. The application had to be submitted in order for the development officer to review and decide if the six-month waiting period would be upheld or if it could be taken to MPC sooner.

### Appellant Presentations

Mr. Huger Ham, representing the appellant, Kerry-Lee Schultheis. Mr. Ham spoke to the written material included in this agenda package.

- The development officer via email made the decision to waive the six-month waiting period. Once the development officer made this decision, he can't change his mind. This is court law.
- The board should waive this six-month waiting period.

### Board Questions

No questions from the board for Mr. Ham.

### Those in Favour of the Appeal

None

### Those Opposed to the Appeal

None

### Development Officer's Response

Enns summarized his presentation with the following comments:

- This appeal is about the resubmission of the bed and breakfast application and the subsequent refusal to waive the six-month waiting period.
- Our standards are higher because we are located in the National Park.
- The thresholds for enforcement are also higher because we are located in a National Park.
- The invoice and notification sign are part of the application process – section 4.4.1 not acceptance of a development permit.
- Section 4.14 and the resubmission waiting period is the issue to be considered.

Appellant Rebuttal:

Mr. Ham stated the following:

- Banff is unique but still part of Canada and subject to the laws of such. There was a breach by the Town with this application.
- The application was for a four bedroom bed and breakfast and making sure all was in compliance with the Town. This wasn't appealed nor should it have been. The Town is getting two jurisdictions confused.
- The emails that the development officer sent to Ms. Schultheis make it seem that the six-month waiting period wasn't an issue.
- The board must show consistency and waive this six-month waiting period.

Motion to Continue Discussion In-Camera

DAB18 - 27 Moved by Sorensen that the DAB move in camera at 11:33a.m. to discuss a matter where public disclosure could be harmful to third party personal privacy as per Section 17 of the *Freedom of Information and Protection of Privacy Act*.

**CARRIED**

Motion to Leave In-Camera Discussion

DAB18 - 28 Moved by Kerr to return to the public meeting at 12:04p.m.

**CARRIED**

Verbal Decision Announced

In the matter of appeal #06-18, the Development Appeal Board recognizes the challenges faced by Town administration as it relates to the importance of having bed and breakfast homes operate within the parameters defined in the land use bylaw.

In the continuing effort to be fair and reasonable and based on the recent decision (appeal #05-18), the Development Appeal Board finds that despite the best efforts to be helpful on the part of the development officer, the impression was clearly stated, that the appeal period would be waived.

The Development Appeal Board rules that the development officer, by his actions, was rightly perceived by the applicant to have the six-month resubmission interval waived.

DAB18 - 29 Moved by Kerr to waive the six-month waiting period for bed and breakfast resubmission at 220 Bow Avenue - 06DP18.

**CARRIED**

**5.0 CORRESPONDENCE**

There was no correspondence presented.

**6.0 NEW BUSINESS**

6.1 Appeal #08-18 – 118 Otter Street – 17DP68; request for an adjournment until Thursday, July 5, 2018.

DAB18 - 30 Moved by Bayne that the Development Appeal Board adjourn the hearing of Appeal #08-18 (17DP68) until Thursday, July 5, 2018.

**CARRIED**

**7.0 INQUIRIES**

There were no inquiries.

**8.0 ADJOURNMENT**

The next regularly scheduled meeting of the Development Appeal Board is scheduled for Thursday, July 5, 2018 at 9:00 a.m.

DAB18 - 31 Moved by Sorensen to adjourn the meeting at 12:08p.m.

**CARRIED**

\_\_\_\_\_  
David Bayne  
Chairperson

\_\_\_\_\_  
Kerry MacInnis  
Recording Secretary