

**DEVELOPMENT APPEAL BOARD  
MEETING AGENDA  
Banff Town Hall – Council Chambers  
Thursday, January 20, 2011 at 9:00 a.m.**

**1.0 CALL TO ORDER**

**2.0 ELECTION OF CHAIRPERSON**

**3.0 APPROVAL OF AGENDA**

**4.0 ADOPTION OF PREVIOUS COMMITTEE MINUTES**

4.1 September 27<sup>th</sup>, 2010 Meeting Minutes

4.2 Development Appeal Board Order- 10DP39- 02-10, 03-10, 04-10

**5.0 REPORTS**

5.1 Development Permit Application 10DP52

Appeal 05-10

Appeal by applicant against a decision of the Municipal Planning Commission to refuse development permit application for a Home Occupation Type 1 (Real Estate Sales Service) on grounds that the proposed business does not require commercial space, that the application meets the definition of a Home Occupation type 1 in the Land Use Bylaw, that the regulations do not restrict the number, location or type of Home Occupation Type 1 or 2 and that the proposed development complies with all of the Home Occupation provisions in Land Use Bylaw 31-4.

**6.0 CORRESPONDENCE**

**7.0 NEW BUSINESS**

**8.0 INQUIRIES**

**9.0 DATE OF NEXT MEETING/ADJOURNMENT**

cc: \* Dak Kerr                      Public Representative  
\* Philip Carmody              Public Representative  
\* Ossi Treutler, Jr.              Public Representative  
\* Leslie Taylor                 Council Representative  
\* Stavros Karlos                Council Representative  
\* Mike Murtha                 Parks Canada Representative  
\* Rod Pickard                  Parks Canada Representative

(\*indicates voting member)

Robert Earl	Town Manager (Agenda only)
Cheryl Hyde	Municipal Clerk
Randall McKay	Manager of Planning
Darren Enns	Senior Planner
Keith Batstone	Planner
Claire Wilkinson	Planner
Bill Squarebriggs	Chair, Municipal Planning Commission
Banff Crag & Canyon	
Rocky Mountain Outlook	
Public Package	
File 10DP52; 05-10;	

**MINUTES OF THE DEVELOPMENT APPEAL BOARD**  
**of the Town of Banff in the Province of Alberta**  
**Town Hall Council Chamber**  
**Wednesday, May 19, 2010 at 10:30 am**

**BOARD MEMBERS PRESENT**

Philip Carmody	Public Representative
Ossi Treutler, Jr.	Public Representative
Mike Murtha	Parks Canada Representative
Leslie Taylor	Council Representative
Chris MacDonald	Council Representative

**BOARD MEMBERS ABSENT**

Neil Tanner	Public Representative
Ron Pickard	Parks Canada Representative

**ADMINISTRATION PRESENT**

McKay, Randall	Secretary to the Development Board
Darren Enns	Senior Planner/Development Officer
Claire Wilkinson	Planner
Dave Kalviainen	Engineering Coordinator
Shannon O'Donovan	Manager of Engineering
Cheryl Hyde	Municipal Clerk (Recording Secretary)

---

**1.0 CALL TO ORDER**

The Secretary to the Development Appeal Board called the May 19, 2010 regular meeting of the Development Appeal Board to order at 10:34 a.m.

**2.0 ELECTION OF CHAIR AND VICE CHAIR**

DAB10-1 Moved by Treutler to elect Philip Carmody as Chair of the Development Appeal Board

**CARRIED**

**3.0 APPROVAL OF AGENDA**

DAB10-2 Moved by Taylor to approve the agenda of the May 19, 2010 regular meeting of the Development Appeal Board as presented.

**CARRIED**

**4.0 ADOPTION OF PREVIOUS COMMITTEE MINUTES**

DAB10-3 Moved by Murtha to approve the minutes of the October 27, 2009 regular meeting of the Development Appeal Board as presented.

**CARRIED**

## 5.0 APPEALS

### 5.1. Appeal #01-10

Appeal by Byron Tarchuk of the decision of the Municipal Planning Commission to conditionally approve development permit 10DP10 for a change of use from “Recycling Depot” to “Rapid Drive-Through Vehicle Service” at 101 Eagle Crescent in the CS (Commercial Service) Land Use District.

The appeal is on the grounds that the conditions of approval for development permit 10DP10 for a two-bay car wash are not consistent with the conditions required for a one-bay car wash under development permit 09DP17.

### 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

There were no declarations of conflict of interest by board members.

### 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

Development Officer Darren Enns provided the following comments:

- Appeal 01-10 is not appealing:
  - The change of use
  - Any one particular condition
  
- At issue for the Development Appeal Board today:
  - Are the conditions for approval between the two development permits different? If so, are these differences justifiable?
  - Is a more relaxed standard being applied?
  - Is the Town of Banff using different criteria for different applications?

Mr. Enns the provided the board with a written comparison of the conditions to be met prior to the issue of the development permits between 09DP17 and 10DP10. This written comparison has been added to the agenda package for the meeting.

### Appellant Presentations

Byron Tarchuk, speaking as the appellant on behalf of the applicants for 09DP17 (single seasonal outdoor wash bay and interior dog wash at 120 Eagle Crescent), made a verbal presentation which included the following:

Mr. Tarchuk does not dispute the the comparison of development permit conditions presented by the Development Officer. Mr. Tarchuk's appeal is based on the conditions he was required to fulfill prior to his application for a development permit.

An indoor car washing facility with two stalls was constructed at 120 Eagle Crescent in 1980, with construction complying with the codes and standards of the day. Prior to submitting development permit 10DP17 for a seasonal outdoor wash bay and interior dog wash at the property, Mr. Tarchuk voluntarily upgraded the indoor sump pits to meet current standards.

At that time (still prior to submission of 10DP17) Town administration advised Mr. Tarchuk he would be required to have a sump pit for the exterior bay designed in a similar fashion as had been done for the indoor bays. Mr. Tarchuk perceived reluctance from the Town's engineering department to approve plans for an outdoor bay without confirmation that the Town's sewer infrastructure would not be taxed to capacity by high volume water usage from his car wash business.

Mr. Tarchuk supplied the Town with an engineered plan for the outdoor sump pit based on calculations supplied from the manufacturer and supplier of equipment being installed at the car wash. The plans were approved by the Town's engineering department. (Administration present at the hearing confirmed that Mr. Tarchuk has exceeded environmental requirements.)

Mr. Tarchuk is concerned that the sump pits at 101 Eagle Crescent are built to 1980's standards and do not meet current standards. He also feels the development authority failed to recognise a change of ownership of properties in the CS District which resulted in a greater number of motor coaches requiring washing facilities. Upgrading washing facilities for the increased number of buses could have a big impact on the sewer infrastructure the Town has already identified as nearing capacity.

Mr. Tarchuk has requested that the Town supply him with the flow calculations made for the property at 101 Eagle Crescent, however his request was refused. He therefore continues to believe that the capacity of the sewer system will be exceeded by the car wash facility. He fails to see why he had to meet stringent requirements when developing his property at 120 Eagle Crescent, and now the property at 101 Eagle Crescent is not being held to the same standard. He believes the Town has relaxed its standards with respect to replacement of sump pits.

#### Those in Favour of the Appeal

Randy Tarchuk, Banff resident, spoke in favour of the appeal. Mr. R. Tarchuk was involved in the construction of the car wash at 120 Eagle Crescent and was aware of the Town's engineering department requirements for changes to the sump pits to reduce the impact on the Town's sewer infrastructure. He was under the impression that the Town's system was at a capacity.

#### Those Opposed to the Appeal

Mike Smythe, the applicant for 10DP10, spoke in opposition of the appeal. Mr. Smythe reported that he was advised by the Town's planning and development department that another car wash had been recently approved and that his car wash would have to meet the same conditions. He agreed with this approach.

#### Development Officer's Response

The development officer made a verbal response which included the following:

Appeals are typically made on the conditions of a development permit. Appeals are not usually based on discussions that may have taken place outside the development permitting process. It's difficult for the Board to consider these types of claims. The Board is, however, able to examine and compare the conditions of the development permits issued for the two projects.

The appellant's claim that the Town's engineering department informed him the sewage system was at capacity are not supported by evidence.

The development permit applicant has one year to meet the conditions of his permit.

The Town's planning and development department does not typically provide engineering reports, such as the flow calculations requested by Mr. Tarchuk, to third parties. These reports are used by the Town's engineering department as part of their assessment of a project.

#### Appellant Rebuttal

Mr. Tarchuk reported that the Town's refusal to provide him with the flow reports for 101 Eagle Crescent is what caused him to go forward with this appeal. Given the direction he received from the Town to ensure his car wash operation operates in an environmentally friendly manner, he is concerned that the same environmental standard is not being applied to the new development.

Should this appeal be denied, Mr. Tarchuk requested that the Board rule that occupancy not be granted to the car wash at 101 Eagle Crescent until engineering standards are met. He further requested that the final engineering reports be made available to the public.

#### Board Discussion

Question: Are improvements to the sump pump/sump pits being required as a result of the report on flow capacity?

Development Officer: The flow calculation report was carried out when the Town's transit facility was approved. Standards for sewer service are found in the 2005 Waste Management Master Plan.

As a condition of the development at 101 Eagle Crescent the applicant must provide detailed drawings of the sump pit design within one year and prior to the issuance of a development permit. Preliminary drawings have been submitted and under review to determine compliance with current standards.

Question: What were conditions of second DP for the car wash at 120 Eagle Crescent (for the indoor bays)?

Appellant: There was no development permit required for interior bays as it was an existing car wash facility.

Administration: It's confirmed that the interior sumps were upgraded by applicant even though it was not required at the time.

Applicant: I was told by the Town that if the interior sumps were not upgraded, then the development permit for the outside bay would not be approved.

Question: How does the board determine if applicants are held to the same conditions?

Administration: Conditions vary with each permit application.

Question: Does administration agree that Mr. Tarchuk was advised that the sewer infrastructure at compound is at or nearing capacity?

Engineering Coordinator: Mr. Tarchuk was advised that the system was nearing capacity at the Pearl Laundry outflow site, where future upgrades are planned. The Eagle Crescent area has a fairly new line so capacity isn't currently an issue there.

Question: Is it possible to provide assurance in writing, signed by a Certified Engineer, that the appropriate reports have been reviewed and found satisfactory?

Manager of Engineering: Assurance can be provided in writing.

Question: How do the drawings of the sump pit design at 101 Eagle Crescent compare with current standards?

Engineering Coordinator: The drawings have not undergone a detailed review. They appear to be with current standards and comparable to the sumps at Mr. Tarchuk's car wash. The sump pit design would be reviewed by the Building inspector to ensure that it meets the current codes not by Town of Banff Engineering.

Question: Will the sump pits be required to meet the same standard that Mr. Tarchuk was required to meet?

Engineering: Yes, the new sumps need to be designed to the current standard and this will be reviewed by the building inspector.

Applicant: The new pumps will be modern and the flow for the four bays will be well within capacity of sump. The old pumps are gone and new pumps are going in.

Motion to Continue Discussion In-Camera

DAB10-4 Moved by Treutler to go in camera at 11:45 a.m.

**CARRIED**

Motion to Leave In-Camera Discussion

DAB10-5 Moved by Treutler to return to the public meeting at 12:15 p.m.

**CARRIED**

Verbal Decision Announced

The Chair read the following decision into the record:

It is ordered:

1. That Appeal 10-10 be denied and that the decision of the Municipal Planning Commission to approve development permit application 10DP10 for a change of use from “recycling depot” to “rapid drive through vehicle service” at 101 Eagle Crescent (Lot 1&2, Block 62, Plan 8939JK) be upheld.
2. That the development permit for the proposed change of use is approved subject to the conditions of approval attached as “Schedule A” to the original Notice of Decision dated April 21, 2010.

Reasons for decision are as follows:

From the evidence presented, the Development Appeal Board found that the conditions of approval for development permit application 10DP10 are different but comparable in nature to the conditions of approval for development permit application 09DP1 and, in the opinion of the Development Appeal Board, the differences are justified based on the site characteristics and scope and intent of each application.

The Development Appeal Board has asked and been assured that the applicant has been and will be held to the water usage and water disposal standards of today.

The Development Appeal Board is satisfied that the criterion of meeting the current engineering and technical standards of today is being applied to 10DP10 as was applied to 09DP1.

Therefore, the appeal was denied.

**6.0 CORRESPONDENCE**

No correspondence was received.

**7.0 NEW BUSINESS**

No new business was considered.

**8.0 INQUIRIES**

There were no inquiries.

**9.0 ADJOURNMENT**

DAB10-6 Moved by MacDonald to adjourn the meeting at 12:19 p.m.

**CARRIED**

\_\_\_\_\_  
Philip Carmody  
Chair

\_\_\_\_\_  
Cheryl Hyde  
Recording Secretary

## DEVELOPMENT APPEAL BOARD ORDER

File No.: 10DP39  
Appeal & Order No.: 02-10, 03-10, 014-10  
Legal Description: Lot 14 and 15, Block 8, Plan 6719BC  
Municipal Address: 403 Wolf Street and 228 Beaver Street

ORDER OF THE DEVELOPMENT APPEAL BOARD OF THE TOWN OF BANFF, IN THE PROVINCE OF ALBERTA dated the 4<sup>th</sup> day of October, 2010.

Development Appeal Board Members present: Councillor Leslie Taylor, Councillor Chris Macdonald, Rod Pickard (Parks Canada Representative) and Philip Carmody, Chairperson (Public Representative).

IN THE MATTER of the Municipal Government Act, Revised Statutes of Alberta, 2000, Chapter M-26, or as in accordance with the Town of Banff Incorporation Agreement between the Government of Alberta and the Government of Canada dated December 12<sup>th</sup>, 1989;

AND IN THE MATTER of a decision made on the 11<sup>th</sup> day of August, 2010 by the Municipal Planning Commission to conditionally approve a development permit application for an eight unit *apartment housing* building at 403 Wolf Street and 228 Beaver Street;

AND IN THE MATTER of an appeal by the appellants from the said decision of the Municipal Planning Commission;

This appeal having come to be heard before the Development Appeal Board on the 27<sup>th</sup> day of September, 2010 in the presence of the Development Officer and the appellants;

AND UPON hearing the verbal submission of the Development Officer and the appellants;

AND UPON having regard to Land Use Bylaw No. 31-4, as amended, the Municipal Development Plan, and other relevant planning policies;

AND UPON considering the relevant planning evidence adduced at this hearing and the circumstances and merits of this application;

.../2

**IT IS ORDERED:**

- (1) That the Development Appeal Board uphold appeal number 02-10 with respect to the application notification sign and uphold appeal number 03-10 with respect to interpretation of grade and calculation of building height, and deny appeal number 04-10;
- (2) That the Development Permit be approved subject to the original conditions of approval imposed by the Municipal Planning Commission and the following amendment:
  - (a) Submission of a revised grading plan, elevations and other plans as required which indicate the calculation of building height from grade using the elevation of finished ground surface (not the top of the existing retaining wall or artificial embankment) to the satisfaction of the Development Officer. The building height shall not exceed 11.0m or three storeys in accordance with Section 12.14.6 (d) of the Land Use Bylaw and RCM (Central Muskrat) Land Use District regulations.

**REASONS FOR THE DECISION:**

From the evidence presented, the Development Appeal Board found that Kerco Limited applied for a development permit to construct an eight unit apartment housing building at 403 Wolf Street and 228 Beaver Street. The subject property is located in the RCM (Central Muskrat) Land Use District the purpose of which is to provide higher density residential uses in a manner that is transitional with adjacent development. Apartment housing is a permitted use in the district and no variances were requested to the design and development regulations of the Town of Banff Land Use Bylaw. The Municipal Planning Commission (MPC) granted development permit approval subject to conditions. Three area residents have appealed against the development permit, or certain aspects of it.

**Appellant #1**

Michael Shragge, on behalf of Mami Miyano appealed on grounds that the applicant for Development Permit (10DP39) failed to comply with the application notification sign requirements of the Land Use Bylaw (Schedule "E") by posting a single sign less than 0.6m X 0.6m and that insufficient information has been provided with respect to meeting on site parking requirements.

### Appellant #2

Mike Sibbald on behalf of Penelope R. L. Sibbald appealed on grounds that the interpretation of the Land Use Bylaw with respect to size of building, site coverage, and grade and building height were incorrect; that information regarding water drainage and stormwater management is inadequate; and, that the impact on their property during and after construction is unclear.

### Appellant #3

Greg and Jeanne Ronaasen appealed on grounds that the proposed tree retention strategy is inadequate and threatens to create a negative precedent; that the proposed development does not respect heritage character of the site and surrounding neighbourhood; that the proposed parking garage entrance should be relocated to Wolf Street; that more studio and one bedroom apartment units should be provided; that the roof design blocks views and should be reconsidered; that the Design Guidelines are not honoured through the current development proposal; and, that a better design could mitigate privacy issues while leaving the existing trees in place.

### Appeal #02-10

Having regard to the oral submissions made, the Town of Banff Land Use Bylaw and written submission made in respect of this appeal the Development Appeal Board concurs with the appellant in that not all of the application notification sign requirements under the provisions of Section 4.4.0 of the Land Use Bylaw were adhered to, including Section 4.4.3, Section 4.4.6 and Section 4.4.7. However, the Board is of the opinion that the intent of the application notification sign requirements has been met, if not exceeded, given the fact that:

(a) the proposed Development Permit application was forwarded to Municipal Planning Commission for review and approval pursuant to Section 3.1.2 of the Land Use Bylaw notwithstanding it is a permitted use in the RCM (Central Muskrat) Land Use District;

(b) Planning and Development staff made available for public inspection before the date of the Municipal Planning Commission meeting on August 11, 2010 all relevant documents and materials respecting the application;

(d) the Development Appeal Board gave notice in writing in advance of the hearing to the appellant, to the owners required to be notified under the provisions of the land use bylaw including adjacent neighbours;

(d) the public notice for the approval of the Development Permit was advertised in the Banff Crag and Canyon on August 17<sup>th</sup>, 2010;

(e) the Development Appeal Board made available for public inspection in advance of the appeal hearing all relevant documents and materials respecting the appeal including the application for the development, the decision and the notice of appeal in accordance with section 686 (1) of the Municipal Government Act; and

(f) the public notice for the Development Appeal Board appeal hearing was advertised for two consecutive weeks in the Banff Crag and Canyon.

It is recognized and understood the application notification sign requirements and provisions of Section 4.4.0 of the Land Use Bylaw need to be improved and that they will be reviewed in conjunction the Land Use Bylaw review and update currently underway.

In regard to the proposed parking plan, the Board is of the opinion that the requirement in the MPC decision for the applicant to provide additional information with respect to parking and alternative transportation incentives is in accordance with the requirements of the Land Use Bylaw.

### **Appeal #03-10**

Having regard to the oral submissions made, the Town of Banff Land Use Bylaw and written submission made in respect of this appeal the Development Appeal Board agrees with the appellant in that building height should be calculated from existing grade and not from the top of the retaining wall. The Board is of the opinion that the retaining wall should be considered an *"artificial embankment"* in accordance with the definition of *"grade"* as described under the provisions of Section 2.3.0 *Interpretive Clauses* of the Land Use Bylaw. As such, the Board upholds the appeal with regards to the interpretation of the Land Use Bylaw and varies the MPC decision by requiring the applicant to submit a revised grading plan and building elevations with the calculation of building height from the elevation of finished ground surface as opposed to the top of the existing retaining wall. We feel that the calculation of the building height from the finished ground surface will not only enhance the appearance of the building but also make it more consistent with other similar style buildings in the area.

With reference to managing potential construction impacts on the adjacent property to the south, we encourage both parties to work together and/or enter into an agreement to mitigate any issues that may arise during and after construction.

With respect to all other aspects of the appeal, including site coverage and onsite stormwater management, we find that the provisions of the Land Use Bylaw have been followed.

**Appeal #04-10**

Having regard to the oral submissions made, the Town of Banff Land Use Bylaw and written submission made in respect of this appeal the Development Appeal Board the decision of the Development Appeal Board is to deny the appeal.

We feel that the proposed tree retention and replacement strategy is adequate and consistent with the requirements of the Town of Banff Land Use Bylaw and Design Guidelines. We also feel that relocating the entrance to the underground parking structure from the rear lane (as proposed) to Wolf Street would be inappropriate and unduly interfere with pedestrian traffic and safety on the sidewalk. In regard to the type of apartment housing units proposed, the Land Use Bylaw does not specify or regulate the number of bedrooms that must be provided by dwelling type.

We also find that the overall architectural design of the building is consistent with the provisions of the Town of Banff Design Guidelines and heritage character of the surrounding neighbourhood.



Philip Carmody  
Chairperson



Date

# DEVELOPMENT APPEAL BOARD HEARING PROCEDURE

## ***Preamble for Chairperson***

- 1.0 Introduce Development Appeal Board Members
- 2.0 Introduce Municipal Staff:
  - i. Legal Counsel to the DAB (if present)
  - ii. Development Appeal Board Secretary
  - iii. Development Officer (note if acting on behalf of MPC)
  - iv. Recording Secretary
- 3.0 Provide an overview of the hearing procedure:
  - i. Presentation from the Development Officer
  - ii. Presentation from the Appellant(s)
  - iii. Presentation from those in favour of the appeal
  - iv. Presentation from those opposed to the appeal
  - v. Development Officer's Response and Closing Remarks
  - vi. Appellant's Rebuttal
  - vii. Discussion and Questions from Development Appeal Board members
  - viii. Motion to continue discussion in-camera
  - ix. Motion to leave in-camera
  - x. Announcement of Verbal Decision

### *Note to those making verbal presentations:*

- State your name and address and how you are affected by the appeal;
- Limit your presentation to 10 minutes (exceptions may be made given the complexity of the appeal); and
- For those wishing to obtain a copy of the final, written decision of the DAB, please provide your name and address to the Recording Secretary.

## ***Hearing Procedure***

- 7.0 Introduce (1<sup>st</sup>, 2<sup>nd</sup>, etc.) appeal, stating the appeal number and reason for the appeal
- 8.0 Ask if affected persons have been notified of the hearing
- 9.0 Ask if any DAB member has a conflict of interest
- 10.0 Ask if there is public objection to any DAB member hearing the appeal
- 11.0 Go through steps noted in hearing procedure above (section 3.0)

After the verbal decision is announced, please state:

*“Per the **MUNICIPAL GOVERNMENT ACT**, the decision of the Development Appeal Board is not final for 15 calendar days. The written decision will be sent to the appellant(s) and to those present who have identified themselves to the Recording Secretary by name and mailing address.”*

# Report to the Development Appeal Board

Appeal #: 05-10

Proposed Home Occupation Type 1- Real Estate Sales Service

Presented to: Development Appeal Board

Hearing Date: January. 20, 2011

Agenda item #: 5.1



Municipal Address:	94 Fox Street	Appeal #:	05-10
Legal Description:	Lot CV13, Plan 740149	Permit File #:	10DP52
Property Owner:	John Bjorgum		
Applicant:	John Bjorgum		
Land Use District:	'RCN' Cougar North District		

APPEAL BY: Mr. John Bjorgum (05-10)

## FROM A DECISION OF THE MUNICIPAL PLANNING COMMISSION:

Whereby a development permit application was refused, on December 7, 2010 for a Home Occupation Type 1 at 94 Fox Street in the RCN (Cougar North) Land Use District.

## REASON FOR APPEAL:

Mr. Bjorgum is appealing the decision to refuse a Home Occupation Type 1 at 94 Fox Street on grounds that the proposed business does not require commercial space, that the application meets the definition of a Home Occupation Type 1 in the Land Use Bylaw, that the regulations do not restrict the number, location or type of Home Occupation Type 1 or 2 and that the proposed development complies with all of the Home Occupation provisions in Land Use Bylaw 31-4.

## NOTICE GIVEN:

Notice of the appeal hearing has been given to the applicant/ appellant, the Municipal Planning Commission and all affected parties in accordance with the Municipal Government Act and Banff Land Use Bylaw 31-4.

## ATTACHMENTS:

1	Notice of Appeal 05-10 by Appellant (December 24, 2010)
2	Notice of Decision – Development Permit 10DP52 for Office Space for a Real Estate Sales Service at 94 Fox Street (December 10, 2010)
3	Report re: Request for Decision by Municipal Planning Commission - Development Permit 10DP52 (December 7, 2010)
	3.1 Description of Business (Appendix 'A' to MPC Report)
	3.2 Proposed Floor Plan (Appendix 'B' to MPC Report)
4	Minutes of December 7, 2010 MPC Meeting
5	Land Use Bylaw 31-4 - Section 2.3.0 <i>Definitions- Home Occupation</i>
6	Land Use Bylaw 31-4 - Section 12.15.0 <i>RCN (Cougar North) Land Use District Regulations</i>

	Land Use Bylaw 31-4 - Section 2.3.0 <i>Definitions- Home Occupation</i>
	Land Use Bylaw 31-4 - Section 10 <i>Specific Use Regulations</i> and Section 10.1.0 <i>Home Occupations</i>



# Notice of Appeal

## Appeals of Orders, Decisions, and Development Permits

Attention: Secretary, Development Appeal Board  
110 Bear Street, P.O. Box 1260, Banff, Alberta T1L 1A1  
T 403. 762.1215 F 403.762.1101

[www.banff.ca](http://www.banff.ca)  
[enviroservices@banff.ca](mailto:enviroservices@banff.ca)

Civic Address (subject of order, decision, or permit): 94 Fox Street Unit No.: \_\_\_\_\_

Legal Description: Lot(s)/Unit: CV13 Block: \_\_\_\_\_ Plan(LTO): 7410149

Land Use District: \_\_\_\_\_

Name(s) of Appellant(s): Jon Bjorgum

What decision, order, or Development Permit is being appealed? \_\_\_\_\_

10 DP 52 Home Application Type One  
Office Space for Real Estate Sales Service

What specific aspects of the decision, order, or Development Permit are being appealed? (attach additional information/pages if necessary) \_\_\_\_\_

- i) the proposed service does not require commercial space
- ii) the application meets definitions HOT1 section 2 Bylaw 31-4
- iii) Town Land Use bylaws do not restrict #, type or location of home occupation Type 1 or 2
- iv) The proposed development complies with all Home Occ. provisions 10.1.1(a) through j in Land Use Bylaw 31-4.

Please state how you are affected by the decision, order, or Development Permit and the reasons for

the appeal: (attach additional information/pages if required) \_\_\_\_\_

- i) in <sup>this</sup> start-up business the cost of commercial space is prohibitive and unnecessary
- 2) a non-resident business licence would be required
- 3) applications for similar services such as contracting, accounting etc have been approved. I should receive fair and equal consideration

(continued on next page)

Name of Appellant(s): Jon Bjorgum

Mailing Address: Box 2436

City/Province: Banff Postal Code: T1L1C2 Email: jon.bjorgum@telus.net

Tel. No.: 403 762 0788 Cell No.: 403 609 0800 Fax No.: 403 762 9178

Name of Agent for Appellant(s): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Email: \_\_\_\_\_

Tel. No.: \_\_\_\_\_ Cell No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**Authorization of Agent**

I/We \_\_\_\_\_ authorize \_\_\_\_\_  
(name(s) of appellant(s)) (name of authorized agent)

to act as agent on my/our behalf with regard to the appeal concerning \_\_\_\_\_  
(civic address of subject property)

Signature(s) of Appellant(s)  
[Handwritten Signature]

Date  
24 Dec 2010

<b>For Office Use Only</b>	
File No.: <u>05-10</u>	<u>Roll # 000979</u>
Application Fee: <u>\$50.00</u>	
Received by: <u>JW</u>	

## Notice of Decision

File: 10DP52

December 10, 2010

Mr. Jon Bjorgum  
P.O. Box 2436  
Banff AB T1L 1C2

Dear Jon:

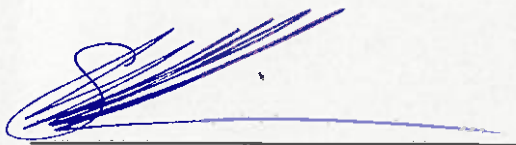
**Re: Proposed: Home Occupation Type 1  
Office Space for a Real Estate Sales Service  
Parcel CV13, Plan 7410149  
94 Fox Street – Banff AB, Canada**

The Development Permit application for 10DP52 for the Home Occupation Type One located at 94 Fox Street was refused by the Municipal Planning Commission on Tuesday, December 7 2010 for the following reason:

- (1) In the opinion of the Municipal Planning Commission, with regard to Section 10.1.5 of Land Use Bylaw 31-4, the nature of the proposed services *'would be more appropriately located in a commercial district'*.

You may appeal this decision within fourteen (14) days of receipt of this Notice by filing written notice stating the reason(s) for the appeal along with a \$50.00 processing fee to: **Secretary, Development Appeal Board, Town of Banff, Box 1260, Banff, Alberta, T1L 1A1.**

If you have any questions regarding this decision please contact Planning and Development at (403) 762-1215.



Development Officer

CW/tw

# REQUEST FOR DECISION

**Subject: Proposed Home Occupation Type 1  
Real Estate Sales  
94 Fox Street**



Presented to: Municipal Planning Commission

Date: December 7, 2010

Submitted by: Claire Wilkinson

Agenda #:

---

## RECOMMENDATION

That Municipal Planning Commission refuse development permit application 10DP52 for a proposed Home Occupation Type 1 (Real Estate Sales Service) given that the nature of the proposed services would be more appropriately located in a commercial district (Section 10.1.5 of Land Use Bylaw 31-4).

## BACKGROUND

### Reason for Report

Home Occupations Type 1 are listed as a discretionary land use within the RCN (Cougar North) District development regulations (s12.15.4). MPC is the development approving authority for all discretionary uses within the Town of Banff.

### Summary of Issue

The proposed Home Occupation Type 1 is for a Real Estate Sales Service specializing in the sale of residential and commercial properties in Banff and Canmore. Located at 94 Fox Street, the subject dwelling is located within one of six adjoining row houses in a 32 dwelling townhouse condominium development constructed circa 1973. Approximately 10ft<sup>2</sup> within the living room of the applicants three bedroom/ 1,476ft<sup>2</sup> dwelling is proposed to be used for a home office and would include space for a computer/internet, telephone communications and record keeping associated with coordination of the applicants existing real estate sales service operating under the trading name of 'Rockies Realty'. A description of the business operations and floor plan has been provided by the applicant and are attached as Appendix 'A' and 'B'.

The applicant is the owner of the proposed home-based business and supporting documentation has also been provided by Parks Canada to confirm of eligible residency under the National Parks Lease and Licence of Occupation Regulations.

The applicant requires a valid Town of Banff business licence to provide real estate sales services in Banff. The applicant is currently conducting business from an office space in Canmore (Suite 8, 713 Main Street).

### Grounds for Refusal

To date there has never been a Home Occupation Type 1 permit issued for real estate sales services. This type of service has historically limited to office space within Banff's Commercial Land Use Districts.

Section 10.1.5 of the Land Use Bylaw states that a home occupation shall not be permitted “*if it would be more appropriately located in a commercial district.*” Planning and Development is of the opinion that this type of home occupation in a residential district is not appropriate given the range of services and nature of business being proposed is of an intensity that is not suited to a residential land use district. Typical activity associated with real estate sales service includes:

- Professional valuation: to obtain information pertaining to the worth of property by way of appraisals
- Brokerage: whereby the service provider acts as a mediator and charges a fee to facilitate a real estate transaction between parties
- Property management: acting on behalf of land owners to include such things as rental fee collection, coordination of general maintenance and landscaping
- Real Estate Marketing: managing the sale of property, including promotions.

It should also be noted that the condominium board has also yet to forward correspondence to Planning and Development confirming that permission has been granted to the applicant to operate the proposed business from their dwelling. A written endorsement would demonstrate that neighbouring property owners have no concerns with the type and nature of the home-based business being proposed.

Feedback from the Interdepartmental Circulation of this application was received by Parks Canada Realty Services. They have indicated “*concern over Town of Banff controls in place to limit/control Home Occupations to ensure excess commercial opportunities do not continue to erode into residential areas. This service is currently provided within commercial area. Parks Canada questions its fit as a Home Occupation and the fairness of an approval of this type. Parks Canada would like the opportunity to discuss this as a bigger picture- to explore cumulative impacts and opportunities to control erosion of commercial growth.*”

#### Of relevance to the Application

No more than 10% of the gross floor area of the dwelling will be used for the proposed business. It is proposed that 90% of all activity associated with the Home Occupation will be conducted off-site. The development proponent has indicated that services associated with the execution of realty operations such as interactions with lawyers, accountants, land appraisers and other professionals will be held off-site.

Within Section 2.3 of Town of Banff Land Use Bylaw 31-4, a Home Occupation Type 1 is defined to mean “*an office...in a dwelling or accessory building for a person who occupies the dwelling as a principal residence. Typical uses include self-employed persons providing professional, financial and office services, telephone, mail order or other sales services not involving any production, or repairs, nor the parking of a commercial vehicle on site.*”

Based solely on this definition it must be recognized that the development proposal, as described, meets the intent of this definition. The proposed home based use is a professional service whereby the applicant is registered with a professional real estate association in order to legitimately engage in the sale of real estate. The marketing and sale of property does not involve any type of production nor does it require the parking of a commercial vehicle on site.

The applicant contends that the nature of services associated with the provision of real estate sales has changed and evolved over time. More specifically, there is an increased ability to coordinate the business associated with Real Estate Sales using internet communication and marketing technologies. As such, the applicant has indicated that the proposed Real Estate Sales Service will have minimal impact upon neighbouring properties since the office space within the dwelling will only be used for administrative work, electronic communication, on-line marketing of realty services and for record keeping.

In addition, the applicant has advised all property inspections are conducted on location and paperwork associated with sales is generally emailed for review with execution taking place at a financial institution, lawyers office or location other than a real estate sales office.

Taking these considerations into account, the potential for pedestrian and vehicle traffic could reasonably be minimized which would limit client visits to meet Section 10.1.1 (g) of the Land Use Bylaw which requires that *“the home occupation shall not generate more than two clients to the site from which the occupation is being operated at any given time”*.

Of importance to note is the requirement that all Home Occupation development permits be renewed on an annual basis, during which time all permit holders must indicate if there are any changes to the business. Should changes in the nature or scale of the proposed Real Estate Sales Service occur – such as the hiring of additional employees and the expansion of service – then the operator would be required to re-locate their operations to a commercial district in accordance with the Land Use Bylaw.

#### Response Options

The Municipal Planning Commission may choose to

- a) Refuse the development permit application;
- b) Approve the development permit application as is, or with any additional/amended conditions of approval as deemed necessary; or
- c) Postpone making a decision pending submission of additional information.

### **IMPLICATIONS OF RECOMMENDATION**

#### Financial

The application fee of \$138.00 for a Home Occupation Type 1 has been paid. Should the application be refused, Planning and Development has indicated that the application fee will be refunded. Payment of the \$110.00 Municipal Planning Commission surcharge to render a decision on this application will be applicable and has yet to be paid.

#### Organizational

A change of address will require an update to the registered place of business listed on the applicants business licence.

#### Banff Community Plan

A primary goal of the Banff Community Plan is *“To provide an appropriate mix of commercial services that meet the long-term need of visitors and residents...”* The proposed Home Occupation Type 1 would not add to the number of Real Estate Sale Services currently available in Banff given that ‘Rockies Realty’ currently provides service to this community.

**CONCLUSION**

Planning and Development commends the applicant for providing reasons to support the location of a real estate sales service in the RCN (Cougar North) Land Use District. However, the recommendation to MPC with respect to this proposal is to refuse the Home Occupation Type 1 given that the proposed service, in the opinion of Planning and Development, is better suited to office space within the CD (Downtown) Land Use District. Furthermore, without the support of the condominium association or neighbours Planning and Development is not convinced that there is community support or demand for this type of commercial activity in residential areas.

**ATTACHMENTS**

Appendix 'A' – Description of Business

Appendix 'B' – Proposed Floor Plan

---

Submitted By:

\_\_\_\_\_  
Claire Wilkinson, Planner

Reviewed By:

\_\_\_\_\_  
Robert Earl, Town Manager

## Appendix 'A' Description of Business

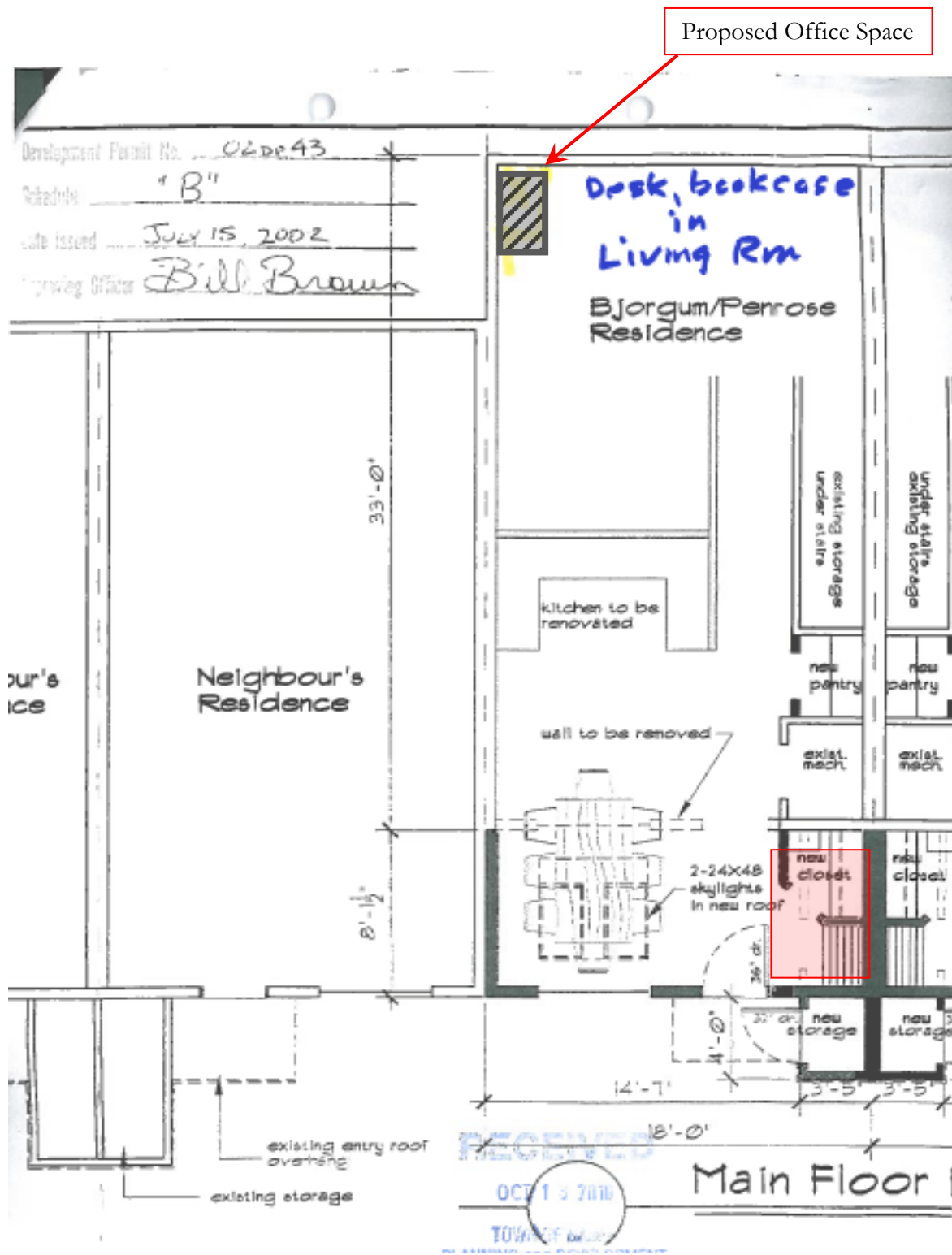
This Home Occupation Application is to facilitate a base for office functions of my Bow Valley real estate business: Rockies Realty. The primary functions are internet and telephone communications. Client meetings take place at their residence, business or public meeting place.

Business will be conducted by me personally- 90% away from my desk and home. Services contracted with lawyers, accountants, appraisers and others will be provided elsewhere.

As business warrants, I may lease retail space and employ an office assistant some time in the future.

**RECEIVED**  
OCT 1 8 2010  
TOWN OF BANFF  
PLANNING and DEVELOPMENT

### Appendix 'B' Proposed Floor Plan



**MINUTES OF THE MUNICIPAL PLANNING COMMISSION**  
**of the Town of Banff in the Province of Alberta**  
**Town Hall Council Chamber**  
**Wednesday, December 7, 2010 at 2:00 p.m.**

**COMMISSION MEMBERS PRESENT**

Bill Squarebriggs	Public Representative – Chair
David Bayne	Public Representative – Vice Chair
Ted Christensen	Public Representative
Jay Harris	Public Representative
Yannis Karlos	Public Representative
Ann-Marie Puccini	Parks Canada Representative
Brian Standish	Council Representative
Grant Canning	Council Representative

**COMMISSION MEMBERS ABSENT**

Vacancy	Administration (non-voting)
---------	-----------------------------

**ADMINISTRATION PRESENT**

Randall McKay	Manager of Planning and Development
Darren Enns	Senior Planner
Claire Wilkinson	Planner
Keith Batstone	Planner/Development Officer
Cheryl Hyde	Municipal Clerk (Recorder)

---

**1.0 CALL TO ORDER**

The Manager of Planning & Development called the December 7, 2010 regular meeting of the Municipal Planning Commission to order at 2:00 p.m.

1.1. Election of Chair and Vice Chair

MPC10-73 Moved by Bayne to elect Bill Squarebriggs as Chair of the Municipal Planning Commission for the 2010-2011 term.

**CARRIED**

MPC10-74 Moved by Squarebriggs to elect David Bayne as Vice-Chair of the Municipal Planning Commission for the 2010-2011 term.

**CARRIED**

**2.0 APPROVAL OF AGENDA**

MPC10-75 Moved by Bayne to approve the December 7, 2010 Municipal Planning Commission agenda with the following addition:

- Under Reports add 5.8 Update on Tim Horton's Project

**CARRIED**

**3.0 ADOPTION OF PREVIOUS COMMISSION MINUTES**

3.1. October 13, 2010 Meeting Minutes

MPC10-76 Moved by to approve the minutes of the October 13, 2010 meeting of the Municipal Planning Commission with the following amendment:

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

- Under item 5.2: “Standish declared a conflict of interest in this matter as he owns a residence on ~~Spray Avenue~~ Mountain Lane.”

**CARRIED**

#### 4.0 UNFINISHED BUSINESS

No unfinished business was considered.

#### 5.0 REPORTS

- 5.1. Proposed Home Occupation Type 2 General Contractor, Management Service Unit 12, 223 Muskrat Street

Mr. Christensen declared a conflict of interest in this matter as he is a general contractor. He also declared a conflict of interest in item 5.2 because the applicant is his neighbour. Mr. Christensen left the meeting at 2:09 p.m.

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC10-77 Moved by Standish to approve development permit application 10DP55 for a proposed Home Occupation Type 2 (General Contractor Management Service) subject to the following conditions of approval :

**(1) Conditions to be met prior to issuance of the Development Permit:**

- (a) Submit to the Town of Banff, the Municipal Planning Commission surcharge fee of \$110.00 in accordance with *Town of Banff Development Permit Fee Bylaw 293*.

**(2) Specific Conditions:**

- (a) This approval allows only for the administrative activities associated with a General Contractor Management Service. Any future expansion of the business, which may include on-site activities associated with construction or the hiring of employees, would require a new development permit in accordance with the Land Use Bylaw.

**(2) General Conditions:**

- (a) No variation from the residential character and appearance of land or buildings shall be permitted;
- (b) No structural change to any building for the purpose of accommodating a Home Occupation shall be permitted;
- (c) No offensive noise, vibration, smoke, dust, odours, heat, glare, electrical or radio disturbance shall be produced by the Home Occupation;
- (d) At all times the privacy and enjoyment of adjacent dwellings shall be preserved and the Home Occupation shall not adversely affect the amenities of the neighbourhood;
- (e) Not more than 10% of the gross floor area of the principal building shall be used for a Home Occupation;
- (f) The Home Occupation shall not occupy a required parking space;
- (g) The Home Occupation shall not generate more than two clients to the site from which the occupation is being operated at any given time;
- (h) The Home Occupation shall not generate any pedestrian or vehicular traffic or parking in excess of that which is characteristic of the neighbourhood within which it is located;
- (i) No exterior storage or operation of the Home Occupation shall be permitted;
- (j) No signs advertising Home Occupations are permitted;

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

- (k) Only one other person other than residents of the principal residence shall be engaged in a Home Occupation Type 2;
- (l) Not more than one commercial vehicle with a gross vehicle weight rating of no more than 3500 kg used in conjunction with the Home Occupation, shall be parked or maintained on the site of a Home Occupation Type 2;
- (m) A Home Occupation Type 2 shall not involve the sale or display of any goods on the site other than those goods constituting the finished principal product of the Home Occupation;
- (n) A Home Occupation shall not be permitted, if in the opinion of the Municipal Planning Commission, it would be more appropriately located in a commercial district;
- (o) The applicant shall obtain a valid Town of Banff Business Licence. Please contact the Business Licence Clerk at Town Hall or by telephone at 403.762.1215;
- (p) The Development Permit is valid for a period not to exceed the lesser of the term of the Business Licence or a period of one year from the date of issuance.

**CARRIED**

MPC10-78 Moved by Standish to recommend that Council direct administration to include a holistic review of home occupations as part of the Land Use Bylaw review.

**CARRIED**

5.2. Proposed Home Occupation Type 1, Real Estate Sales 94 Fox Street  
Administration spoke to a written report distributed in the agenda package for this meeting. The applicant was present in the gallery to answer questions from the Commission.

MPC10-79 Moved by Bayne to go in camera at 2:38 p.m.

**CARRIED**

MPC10-80 Moved by Bayne to return to the public meeting at 2:53 p.m.

**CARRIED**

MPC10-81 Moved by Bayne to refuse development permit application 10DP52 for a proposed Home Occupation Type 1 (Real Estate Sales Service) given that the nature of the proposed services would be more appropriately located in a commercial district (Section 10.1.5 of Land Use Bylaw 31-4).

**CARRIED**

Mr. Christensen returned to the meeting at 3:10 p.m.

5.3. Proposed Renovation to allow for 'Triplex Housing' and one 'Accessory Dwelling' – 337 Otter Street

Administration spoke to a written report distributed in the agenda package for this meeting. The applicant was present in the gallery to answer questions from the Commission.

MPC10-82 Moved by Standish to go in camera at 3:17 p.m.

**CARRIED**

MPC10-83 Moved by Harris to return to the public meeting at 3:31 p.m.

**CARRIED**

MPC10-84 Moved by to Harris approve Development Permit application 10DP58 for the proposed renovation of the existing residence at 337 Otter Street with a variance to s.8.10.5 and s.12.25.7(f) of Land Use Bylaw 31-4 to allow for an ‘accessory dwelling’ where the principal use of the site is ‘triplex housing’ and the lot does not feature frontage on two or more public roadways, subject to the following conditions of approval:

**(1) Conditions to be met prior to issuance of the Development Permit:**

- (a) Submit to the Town of Banff the outstanding Variance Development Permit fee of \$550.00 (\$275.00/variance) as established in *Town of Banff Development Fee Bylaw 293*;

**(2) Specific Conditions:**

- (a) Issuance of this Development Permit allows for the renovation of the existing buildings with variances to s.8.10.5 and s.12.25.7(f) of the Land Use Bylaw to allow for an ‘accessory dwelling’ where the principle use of the site is ‘triplex housing’ and where the lot does not have frontage on two or more public roadways. The Development Permit restricts the total number of dwellings to four (4) at the subject property, in accordance with the intent of the ‘RNC’ District. Any future changes to the property shall conform to the provisions of the Land Use Bylaw, and may require that the number of bedrooms and dwellings be limited, due to the unique character of the property;
- (b) Remove all unapproved building materials (eg. shake siding and trim on the buildings) and install the previously-approved building materials to the satisfaction of the Development Officer as outlined in Development Permit 08DP06;

**(3) General Conditions:**

- (a) Any further changes to the approved plans or building shall be submitted for review and approval of the Development Officer prior to implementation on-site;
- (b) Apply for a Street Use Permit from the Manager of Engineering at least 48 hours prior to any work on Town streets, lanes or sidewalks. Enter into a temporary Encroachment Agreement with the Town of Banff for the use of Municipal property during construction (if necessary);
- (c) All exposed metal flashing, mechanical equipment and flues shall be coordinated to match the building colour;
- (d) Protect all existing services including landscaping on adjacent roadways or properties and assume responsibility for all damages to any existing services during construction;
- (e) Confine “noise” activities to hours set out in the *Town of Banff Community Standards Bylaw 260*;
- (f) The Town of Banff requires all developers to collect all waste, separate into appropriate categories on-site and store appropriately. Dispose trade waste at the Bow Valley Waste Management Commission’s Class III landfill (Francis Cook) and garbage to the Waste Transfer Station. Ensure that materials and waste being transported are covered with tarps or equivalent material. Please review the Town of Banff’s *How-to guide to construction waste management (see attached)*
- (g) Ensure that all garbage and food waste is stored in bear-proof bins as per Banff Waste Bylaw;
- (h) Construction sites must undergo thorough clean-up, including removal of general litter at project completion;
- (i) Obtain any required Electrical or Plumbing Permits prior to commencement of any on site construction.

**CARRIED**  
**Puccini opposed**

MPC10-85 Moved by Harris to direct administration to address notification procedures as part of the Land Use Bylaw review process.

**CARRIED**

5.4. Preliminary Determination of Use – Proposed Stacked Row House, Single Detached Dwelling and one Accessory Dwelling 129 Cave Avenue (10DP59)

Administration spoke to a written report distributed in the agenda package for this meeting. The applicant, project architect and project developer were present in the gallery to answer questions from the Commission.

MPC10-86 Moved by Squarebriggs to go in camera at 3:51 p.m.

**CARRIED**

MPC10-87 Moved by Standish to return to the public meeting at 4:02 p.m.

**CARRIED**

MPC10-88 Moved by Karlos to approve preliminary determination of use for the proposed demolition of an existing duplex dwelling and the construction of a five unit stacked row house, one single detached dwelling and one accessory dwelling at 129 Cave Avenue with a minor variance to the maximum allowable gross floor area for the single detached dwelling from 325m<sup>2</sup> to 473m<sup>2</sup>.

**CARRIED**

MPC10-89 Moved by Puccini to amend motion MPC10-88 by adding the following, at the request of Parks Canada: "... and on a condition the condition that clarification be provided regarding compliance with the Land Use Bylaw, specifically with respect to side yard setbacks."

**CARRIED**

The vote followed on motion MPC10-88 as amended: to approve preliminary determination of use for the proposed demolition of an existing duplex dwelling and the construction of a five unit stacked row house, one single detached dwelling and one accessory dwelling at 129 Cave Avenue with a minor variance to the maximum allowable gross floor area for the single detached dwelling from 325m<sup>2</sup> to 473m<sup>2</sup>, and on the condition that clarification be provided regarding compliance with the Land Use Bylaw, specifically with respect to side yard setbacks.

**CARRIED**

5.5. Proposed Change of Use "Transportation Service" to "Commercial Service" Mobile Food Catering) 141 Eagle Crescent (10DP51)

Councillor Canning declared a conflict of interest as he operates a business similar to the one being considered. He left the meeting at 4:12 p.m.

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC10-90 Moved by Standish to approve Development Permit application 10DP51 for a proposed Change of Use of an existing commercial business unit from "Transportation Service" to "Commercial Service" (Mobile Food Catering) at 141 Eagle Crescent subject to the following conditions of approval:

**(1) Conditions to be met prior to issuance of the Development Permit:**

- (a) Pay to the Town of Banff the remaining \$110.00 portion of the Change of Use Development Permit fee for discretionary uses in accordance with *Town of Banff Development Fee Bylaw 293*;

**(2) Specific Conditions:**

- (a) Issuance of this Development Permit allows for the conversion of office space associated with the existing 'Transportation Service' (25.6m<sup>2</sup>) to 'Commercial Service' (Mobile Food Catering). Any future changes of use of the subject commercial floor area may require a Development Permit and shall be subject to the provisions of the *Town of Banff Land Use Bylaw*;
- (b) The proposed change of use results in a surplus of total required housing of 0.32 bedrooms. The total required housing for the property is in surplus. Any future intensification of use at the subject property may require that housing bedrooms be supplied or cash-in-lieu of housing shall be provided in accordance with the *Town of Banff Land Use Bylaw*. It is the responsibility of the property owner to maintain suitable records indicating the current balance of provision of housing;
- (c) Receive final approval from Alberta Health Services prior to operation of the mobile food catering service. Please contact the Banff Health Unit at 403.762.2990 for more information and to arrange for an inspection. Provide a copy of final approval to Town of Banff Planning and Development, attention: Mr. Keith Batstone;

**(3) General Conditions:**

- (a) Submit details of any change to the approved plans for review and approval by the Development Officer prior to implementation on-site;
- (b) The applicant shall obtain a Business Licence from the Town, which shall reflect the use approved by this Development Permit;
- (c) A Sign Permit is required for any new signs or replacement of existing signs on the building. A Sign Permit is also required for decal or painted window signs with a combined area greater than 0.3 m<sup>2</sup> or 10% of the window in which they are located and for interior signs located closer than 0.9m from the inside face of a window.
- (d) The applicant may require a valid Town of Banff Building Permit for any interior renovations and leasehold improvements. Please contact Town of Banff Planning and Development at 403.762.1215 for more information.

**CARRIED**

Councillor Canning returned to the meeting at 4:27 p.m.

5.8 Update – Tim Horton's Project

This item was moved forward on the agenda by unanimous consent of the Commission.

Two representatives of Tim Horton's were present in the gallery to answer questions from Council. The Fire Chief was also present.

Administration reported that a legally binding stop order work order was served on Tom Horton's by the Town because of fire code deficiencies, failure to obtain an occupancy permit and failure to obtain a business license. The business is currently closed to the public, and will re-open when the deficiencies have been addressed to the satisfaction of the Fire Chief and the Development Officer.

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

5.6. Development Permit Renewals for Home Occupations (Type 1 and Type 2) 2011  
 Administration spoke to a written report distributed in the agenda package for this meeting.

MPC10-91 Moved by Bayne to renew all Development Permits for Home Occupations (Type I and II) listed below for a one-year term, subject to the original conditions of approval:

Permit No.	Civic Address	Type Of Business	Occupation Type
90DP75	120 Grizzly Street	Management Consultant	1
91DP107	201 Jasper Way	Contract Writing Service	1
93DP01	156 Marmot Crescent	Desktop Publishing Service	1
94DP15	131A Park Avenue	Music Entertainment Service	1
94DP98	119 Otter Street	Wholesale Jewellery Sales	1
95DP55	128 Grizzly Street	Vacuum Sales Representative	1
97DP83	201 Porcupine Place	Psychological Counselling Service	1
98DP73	202 Glen Crescent	Bookkeeping & Accounting Services	1
98DP95	110 Muskrat Street	Ski Area Consultant	1
99DP51	106 Nahanni Drive	Travel Consultancy	1
00DP17	27 Fairholme Place	Interior Design Consultant	1
00DP58	5 Cascade Court	Interior Design Consultant	1
01DP02	117 Glacier Drive	Leadership Consulting	1
01DP08	126 Park Avenue	Wholesale Sales and Distribution Service	1
03DP36	94 Fox Street	Consultant	1
03DP39	345 Muskrat Street	Appraisal Service	1
04DP02	129 B Cave Avenue	Management Consultant	1
04DP19	223 Kluane Drive	Environmental Surveillance Consultant	1
04DP26	92 Fox Street	Internet Consulting	1
04DP39	113 A Otter Street	Fly-fishing Guide	1
04DP49	513 A Deer Street	Photography Service	1
04DP68	201 Springs Crescent	Leadership Development Consultant	2
05DP06	348 Squirrel Street	Computer Network Consultant	1
05DP50	207 Jasper Way	Bookkeeping Business	1
05DP58	536 Deer Street	Publishing Company	1
06DP02	529 Deer Street	Bookkeeping and Accounting Business	1
06DP05	327 Marten Street	Golf Reservations Service	1
06DP10	127 A Muskrat Street	Photographic Business	1
06DP37	267 Jasper Way	Television & Film Production	1
06DP53	217 Springs Cres	Graphic Design Business	1
06DP54	3F Otter Lane	Marketing & Sales Consultant	1
06DP62	118 Spray Avenue	Mountain Guiding Service	1
07DP02	12 Fairholme Place	Project Management Service	1
07DP04	216 St Julien Road	Photography Mentoring Service	1
07DP23	24 Sulphur Court	Bookkeeping Service	1
07DP37	137 Park Avenue	Photography Business	1
07DP50	#203-404 Wolf Street	Nordic Ski School Instruction	1
07DP53	329 Middle Springs Dr	Interpretive Guiding/Hiking Service	1
08DP13	201 - 136 Beaver St	Spa-Wellness Treatment Consultant	1
08DP37	#9 - 504 Banff Avenue	Bookkeeping Service	1

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

Permit No.	Civic Address	Type Of Business	Occupation Type
08DP38	102 - 347 Marten Street	Graphic Design Service	1
08DP40	437A Muskrat Street	Safety Training Service	1
09DP05	133 Muskrat Street	Yoga Instruction and Guide Service	1
09DP16	110 Beaver Street	Outdoor Equipment Sewing Service	2
10DP07	414B Otter Street	Freelance Journalist	1
10DP23	223 Muskrat Street	General Contractor Consultant	2
10DP29	331 Marten Street	Graphic Design Service	1

**CARRIED**

5.7. Development Permit Renewals for Bed and Breakfast Homes & Inns 2011/2012

Mr. Karlos declared a conflict of interest as he owns a bed and breakfast home. He left the meeting at 4:35 p.m.

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC10-92 Moved by Puccini to grant Development Permit renewal for all of the Bed and Breakfast Homes and Bed and Breakfast Inns listed below for a two-year term, subject to the original conditions of approval:

Development Permit No.	Civic Address	# of Rooms	# of Pillows	Conditions
90DP108	2 Cascade Court	2	4	No Change
91DP87	117 Spray Avenue	2	4	No Change
93DP06	132 Otter Street	1	2	No Change
93DP25	412 Marten Street	3	9	No Change
93DP26	328 Elk Street	2	6	No Change
93DP34	124 Spray Avenue	8	17	No Change
95DP08	209 Otter Street	1	4	No Change
95DP22	452 Muskrat Street	2	4	No Change
95DP27	510 Buffalo Street	2	4	No Change
96DP30	427 Marten Street	2	4	No Change
96DP73	336 Beaver Street	2	4	No Change
96DP100	133 Kootenay Avenue	2	4	No Change
96DP115	202 Grizzly Street	1	2	No Change
98DP10	419 Beaver Street	1	4	No Change
98DP17	104 Mountain Lane	1	4	No Change
98DP19	329 Big Horn Street	2	6	No Change
98DP41	608 Wolf Street	2	4	No Change
98DP42	530 Caribou Street	1	4	No Change
99DP88	311 Marten Street	7	17	No Change
00DP12	332 Squirrel Street	2	4	No Change
00DP21	220 Bow Avenue	2	4	No Change
00DP74	213 Glen Crescent	1	2	No Change
02DP31	117 Grizzly Street	3	6	No Change
03DP16	138 Otter Street	2	4	No Change

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

Development Permit No.	Civic Address	# of Rooms	# of Pillows	Conditions
03DP22	347 Grizzly Street	2	4	No Change
03DP72	417 Marten Street	4	8	No Change
04DP59	316 Lynx Street	2	4	No Change
05DP29	437 Marten Street	3	8	No Change
06DP15	121 Cave Avenue	10	24	No Change
06DP40	415 Cougar Place	2	4	No Change
06DP57	137 Muskrat Street	10	22	No Change
07DP07	220 Beaver Street	5	16	No Change
08DP15	333 Muskrat Street	1	2	No Change
09DP33	119 Mountain Avenue	2	4	No Change

**CARRIED**

**6.0 CORRESPONDENCE**

6.1. 2011 MPC Meeting Schedule  
Accepted as information.

**7.0 NEW BUSINESS**

No new business was considered.

**8.0 INQUIRIES**

There were no inquiries.

**9.0 DATE OF NEXT MEETING/ADJOURNMENT**

The next regular meeting of the Municipal Planning Commission is scheduled for Wednesday, January 12, 2011 at 9:00 a.m.

MPC10-93 Moved by Standish to adjourn the meeting at 4:45 p.m.

**CARRIED**

\_\_\_\_\_  
Bill Squarebriggs  
Chair

\_\_\_\_\_  
Cheryl Hyde  
Recording Secretary

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

### **2.3.0 Definitions**

2.3.1 Words and terms used in this Bylaw shall have the same meaning as given to them in the Agreement and the Act unless otherwise defined in this section.

2.3.2 The defined uses in this section group similar developments and land uses into specified uses with common functional or physical impact characteristics. The typical uses that may be listed in a specific definition are not intended to be exclusive or restrictive. Reference should be made to the definition of the use in determining whether or not a particular use is included within a particular defined use.

2.3.3 Where a specific use does not conform to the wording of any use definition or generally conforms to the wording of two or more use definitions, a Development Approving Authority may, using discretion, deem that the use conforms to and is included in that use class considered to be the most appropriate in character and purpose, provided that the specific use is substantially similar in nature, character and impact as the other uses listed in the use class. In such case, the use shall be considered a discretionary use, whether or not the use class is listed as permitted or discretionary within the district.

half storey also includes a basement with between 0.6 m and 1.5 m of its clear height lying between grade and the level of the finished floor directly above it. (See the Interpretative Diagrams in Schedule “C”).

**Hardsurfacing** means a durable ground surface, constructed of cast-in-place concrete, brick or concrete unit pavers, turfstone, stone, asphalt, or similar materials, and includes hard packed gravel in the CS District (but excluding clay).

**Height** means:

- a. with respect to a building, the maximum vertical distance between grade and the highest point of the structure of a non-sloping roof, or between grade and the mid-point between the eavline and ridge of a sloping roof; provided in such cases the ridge is not more than 3.0 m above this mid-point; (see the Interpretative Diagrams in Schedule “C”).
- b. with respect to signs, the maximum vertical distance between grade and the highest point of the sign.

**Holiday Decorations** means temporary ornaments and displays erected in conjunction with holiday activities such as Christmas where such ornaments and displays incorporate no sign or advertising of specific commercial services, merchandise, or entertainment.

**Home Occupation** means the use of a dwelling or residential accessory building for an occupation, office, trade or craft, Family Day Home or Private Babysitting Facility for gain or support, conducted entirely within the dwelling or accessory building as an accessory use. Home occupations are classified into the following two types:

**Home Occupation Type 1** means an office, Family Day Home or Private Babysitting Facility in a dwelling or accessory building for a person who occupies the dwelling as a principal residence. Typical uses include self-employed persons providing professional, financial and office services, telephone mail order or other sales services not involving any production, or repairs, nor the parking of a commercial vehicle on site.

**Home Occupation Type 2** means an occupation, trade, art or craft, Family Day Home or Private Babysitting Facility for gain or support, conducted entirely within the dwelling or related accessory building, by a person who occupies the dwelling as a principal residence. Typical uses include dressmaking, millinery, homecrafts, novelties and souvenirs, handicrafts and individual instruction to students, mobile repairs and installation, and minor household repair services.

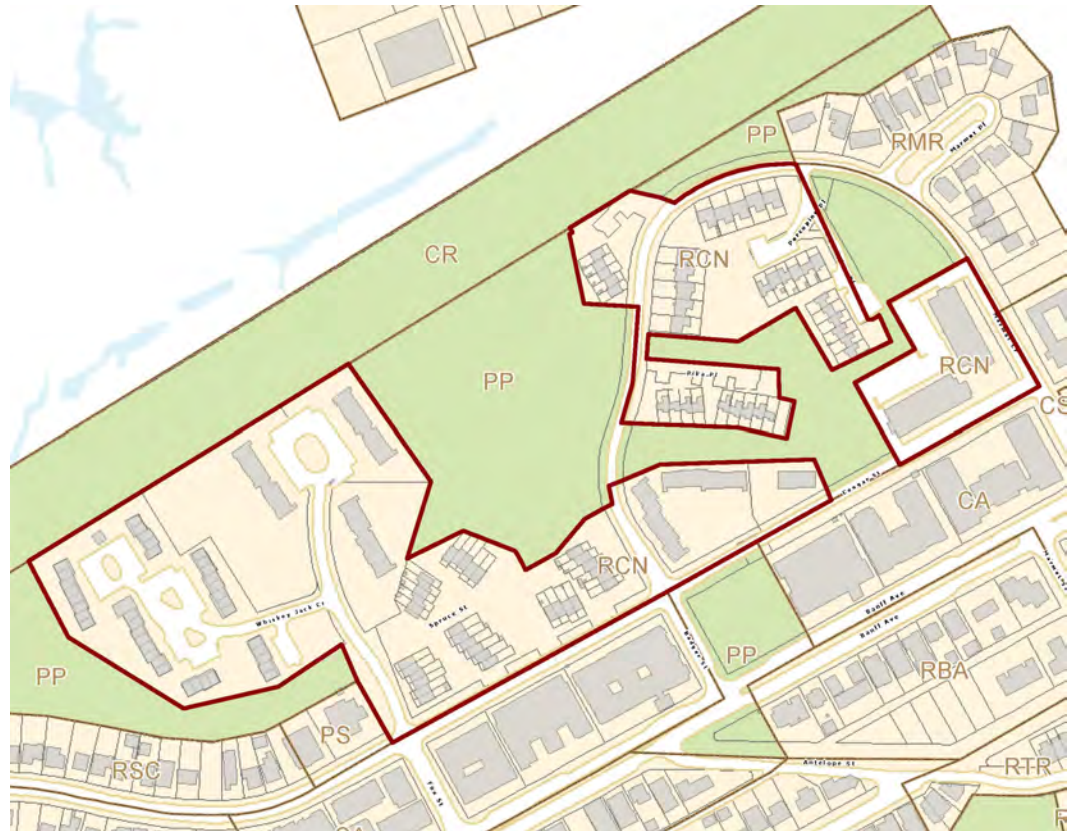
**Hostel** means the provision of commercial accommodation units, operated by a national or international not-for-profit hostel organization, intended for travellers at rates consistent with international hostels. Hostels may include some limited accessory uses such as cafeterias, meeting rooms, outdoor recreation services, and provide services for longer term guests.

**Hotel** means a lodge, inn, motel or other establishment other than a bed & breakfast home or bed & breakfast inn, which contains commercial accommodation units. Hotels may include the following accessory uses: eating and drinking establishments, meeting rooms,

## 12.15.0 RCN: Cougar North District

### 12.15.1 Area:

Located between the railway and the CA (Commercial Accommodation) District, this district extends south from Marmot Crescent to include those residential lots fronting Fox Street. It encompasses an area previously developed for row housing and apartment projects. This area is surrounded by substantial green space.



## RCN: Cougar North District

### 12.15.2 Purpose:

The purpose of this district is to maintain the existing housing types and neighbourhood character but to allow for minor additions and infill.

### 12.15.3 Permitted Uses:

- Public park
- Row housing

### 12.15.4 Discretionary Uses:

- Apartment housing
- Home occupations type 1
- Home occupations type 2
- Stacked row housing

### 12.15.5 Subdivision Regulations:

- Subdivision is at the discretion of the Municipal Planning Commission, but must be in the form of a condominium subdivision.

### 12.15.6 Development Regulations:

#### Density:

- The maximum floor area ratio is 0.5.

#### Site Coverage:

- The maximum site coverage is 30%.
- Notwithstanding Section 12.15.6(b), the maximum site coverage may be increased as follows:

Unit Type	Requirement	Permitted Site Coverage
Row Housing or Stacked Row Housing	Installation of a stormwater management system in accordance with Town of Banff Municipal Engineering Standards.	45%, except this shall be increased to a maximum of 50% proportional to the amount of parking provided below grade.

Apartments	Installation of a total stormwater capture and treatment system in accordance with Town of Banff Municipal Engineering Standards.	50%, except this shall be increased to a maximum of 55% proportional to the amount of parking provided below grade.
------------	---	---

**Height:** d. The maximum height is 9.0 m or 2 ½ storeys.

**Setbacks:** e. The minimum setback from a railway line is 35 m. from the centre line of the nearest railway mainline. All other setbacks are the discretion of the Development Approving Authority.

**12.15.7 Design Regulations:**

- a. Each row house dwelling shall have a minimum outdoor amenity area of 7.5 m<sup>2</sup>, and all other dwellings shall have a minimum outdoor amenity area of 5.0 m<sup>2</sup>.
- b. Landscaping shall supplement existing trees. On-site parking shall be screened and landscaped with treed planting islands and ground cover planting. Substantial tree buffers shall be maintained along the C.P.R. and Cougar Street.
- c. A minimum of 50% of required parking shall be provided either within principal or accessory buildings or underground.
- d. All sites abutting a rail right-of-way shall be developed in accordance with CMHC standards with respect to rail noise and housing.
- e. New development should be in keeping with materials, colours, and architectural forms of existing development.
- f. A minimum of 40% of the site shall be landscaped.

**12.15.8 Other Regulations:**

- a. In addition to the regulations and guidelines listed above, other regulations may apply. These include the General Development Regulations of Section 8.0.0 (including the mitigative measures required by the environmental assessment process, environmental design standards, tree removal, fences, accessory development, parking, etc.), the Specific Use Regulations of Section 10.0.0 and the Sign Regulations of Section 11.0.0 among others.
- b. No dwelling shall have more than 4 bedrooms.

## **10.0.0 Specific Use Regulations**

The Specific Use Regulations shall apply to all development in the Town, unless otherwise exempted in this section. Where these regulations may be in conflict with any District Development Regulations or General Regulations, the Specific Use Regulations shall take precedence.

## **10.1.0 Home Occupations**

10.1.1 All home occupations shall comply with the following:

- a. No variation from the residential character and appearance of land or buildings shall be permitted;
- b. No structural change to any building for the purpose of accommodating a home occupation shall be permitted;
- c. No offensive noise, vibration, smoke, dust, odours, heat, glare, electrical or radio disturbance shall be produced by the home occupation;
- d. At all times the privacy and enjoyment of adjacent dwellings shall be preserved and the home occupation shall not adversely affect the amenities of the neighbourhood;
- e. Not more than 10% of the gross floor area of the principal building shall be used for a home occupation except Family Day Homes and Private Babysitting Facilities where all areas of the principal building or accessory building may be used;
- f. The home occupation shall not occupy a required parking space;
- g. The home occupation shall not generate more than two clients to the site from which the occupation is being operated at any given time except Family Day Homes and Private Babysitting Facilities where the number of clients shall be limited to no more than six per day;
- h. The home occupation shall not generate any pedestrian or vehicular traffic or parking in excess of that which is characteristic of the neighbourhood within which it is located;
- i. No exterior storage or operation of the home occupation shall be permitted; and
- j. No signs advertising home occupations are permitted.

10.1.2 No person other than residents of the principal residence shall be engaged in a home occupation type 1, and only one other person other than residents of the principal residence shall be engaged in a home occupation type 2.

10.1.3 No parking of commercial vehicles on or about the site is allowed for a home occupation type 1. Not more than one commercial vehicle with a gross vehicle weight rating of no more

than 3500 kg used in conjunction with the home occupation, shall be parked or maintained on the site of a home occupation type 2.

10.1.4 No retail sales shall be permitted in a home occupation type 1, and a home occupation type 2 shall not involve the sale or display of any goods on the site other than those goods constituting the finished principal product of the home occupation.

10.1.5 A home occupation shall not be permitted, if in the opinion of the Municipal Planning Commission, it would be more appropriately located in a commercial district.

10.1.6 In granting a permit for a home occupation, a Development Approving Authority shall restrict the use to a specified time limit, coinciding with the term of the business licence, but in any case for no longer than 1 year.

## **10.2.0 Vehicular-Oriented Uses**

10.2.1 Vehicular-oriented uses shall include service stations, drive-through vehicle services and such developments providing drive-in services in which patrons generally remain within their vehicles. This does not include drive-in food services which are prohibited by this Bylaw.

10.2.2 Vehicular-oriented uses shall be permitted only when a Development Approving Authority is satisfied that the development will not adversely affect the functioning of surrounding public roadways or adversely impact on adjacent commercial accommodation or residential uses.

10.2.3 The minimum site width for a vehicular-oriented use shall be 30.0 m.

10.2.4 Site area shall be provided as follows:

- a. The minimum site area for any development incorporating a vehicular-oriented use shall be 930 m<sup>2</sup>, and the maximum site coverage shall be 15%.
- b. The minimum site area for a service station shall be 1,200 m<sup>2</sup> and the maximum site coverage, including pump islands, shall not exceed 20%.
- c. The minimum site area for a drive-through vehicle service shall be 140 m<sup>2</sup> of site area not covered by buildings for each service bay, except that the minimum site area and coverage for a car wash shall be determined on the basis of 370 m<sup>2</sup> of space not covered by buildings for each car wash bay.
- d. Where two or more of these uses are part of a mixed use development on the same site, the total site area requirements shall be the sum of the requirements of the uses computed separately, unless the applicant can demonstrate to the satisfaction of the Development Approving Authority that there is a complementary use of space which would warrant a reduction in site area requirement.

10.2.5 Queuing space shall be provided as follows:

- a. For drive-through vehicle services, a minimum of two in-bound and one out-bound queuing spaces shall be provided for each service bay.