

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