

**MINUTES OF THE DEVELOPMENT APPEAL BOARD**  
**of the Town of Banff in the Province of Alberta**  
**Town Hall Council Chamber**  
**Thursday, January 20, 2011 at 9:00 am**

**BOARD MEMBERS PRESENT**

|                |                             |
|----------------|-----------------------------|
| Philip Carmody | Public Representative       |
| Dak Kerr       | Public Representatives      |
| Mike Murtha    | Parks Canada Representative |
| Ron Pickard    | Parks Canada Representative |
| Leslie Taylor  | Council Representative      |

**BOARD MEMBERS ABSENT**

|                    |                        |
|--------------------|------------------------|
| Ossi Treutler, Jr. | Public Representative  |
| Stavros Karlos     | Council Representative |

**ADMINISTRATION PRESENT**

|                  |                                       |
|------------------|---------------------------------------|
| Randall McKay    | Secretary to the Development Board    |
| Claire Wilkinson | Planner                               |
| Cheryl Hyde      | Municipal Clerk (Recording Secretary) |

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**1.0 CALL TO ORDER**

The Secretary to the Development Appeal Board called the January 20, 2011 regular meeting to order at 9:00 a.m.

**2.0 ELECTION OF CHAIRPERSON**

DAB11-1 Moved by Taylor to elect Philip Carmody as Chair of the Development Appeal Board for the 2011 term.

**CARRIED**

**3.0 APPROVAL OF AGENDA**

DAB11-2 Moved by Taylor to approve the agenda of the regular meeting of the Development Appeal Board as presented.

**CARRIED**

**4.0 ADOPTION OF PREVIOUS COMMITTEE MINUTES**

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

DAB11-3 Moved by Taylor to approve the minutes of the regular meeting of the Development Appeal Board as presented.

**CARRIED**

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

DAB11-4 Moved by Murtha to approve Development Appeal Board Order 10DP39 02-10, 03-10, and 04-10.

**CARRIED**

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

## 5.0 APPEALS

### 5.1. 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.

Councillor Taylor disclosed that she holds a Home Occupation Type 1 development permit. This does not cause her to have a pecuniary interest in the matter under appeal.

### 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 31-4.

### Development Officer's Comments

The development officer provided an overview of the administrative report submitted to the Municipal Planning Commission at the hearing where development permit 10DP52 was considered. This report was distributed as part of the agenda package for this meeting.

### Appellant Presentations

Mr. Bjorgum contends that:

- The operation of the proposed Real Estate Sales service does not require commercial office space.
- The application meets the definition of a Home Occupation Type 1 as defined in Section 2 of the Land Use Bylaw.
- The Land Use Bylaw does not contain provisions that restrict the number, type or location of Home Occupation Types 1 or 2.
- The proposed development complies with Home Occupation provisions 10.1.1(a) through (j) in the Land Use Bylaw.

Mr. Bjorgum provided the Board with copies of a letter of support provided by the Rundlevue Housing Cooperative (where his home is located), a letter of support from owners of five row houses adjoining his dwelling, a petition in support of his application with 51 signatures. This was added to 5 letters of support distributed as part of the agenda package for this meeting.

Mr. Bjorgum questions the decision of the Municipal Planning Commission that a Real Estate Sales Service would be more appropriately located in a commercial district. He believes that this may have been true in the past, however the nature of the business has changed with the advent of personal

computers, new technological systems, fax and the Internet. He believes he may have been successful in his application if he'd presented his home occupation as a real estate consultant rather than a real estate sales service.

Typical activities associated with Mr. Bjorgum's business include:

- Professional valuation
- Brokerage
- Real estate marketing

Mr. Bjorgum believes many local real estate offices are moving to virtual offices, and maintaining office space only to house a receptionist. His business activities are typically carried out through email, usually meeting with customers only when he is showing them property. He has no need to meet customers in his office. Out of thirty business transactions he has participated in during the last six years, a customer has come to his house only twice. He's confident his neighbours would not be affected by approval of a home occupation.

Mr. Bjorgum read the following comments into the record:

"Home occupancy has to be considered and thought about as part of a much bigger picture than the current regulations that just deal with impacts on adjacent residential properties. Namely, how do home occupancy businesses fit within the economy and sustainability of Banff now that we have reached commercial build out? That is really the issue at hand.

One of the known effects of commercial build out is "intensification of use" in the Commercial Downtown (CD) district. Intensification of use means the lower rent uses, such as office spaces, will be converted to higher use (and higher rent) such as restaurant and retail. When the legislated cap was put in place in 1999 there was no consideration of these "collateral" impacts on Banff. At the same time, the Banff Community Plan says one of the primary goals of Banff's land use and economy is to create a "sustainable" economy.

The obvious collateral effect of commercial build-out will be very low vacancy rates, due to the demand exceeding supply. Stated another way, rents will rise and remain high – likely beyond the affordability of many small office based businesses. We are a high-demand community/resort. At 1.7% commercial vacancy, we are unparalleled – perhaps on the continent. To create a sustainable economy for small office types of businesses, the sole land use available is home occupancy businesses operating out of people's homes. The alternative will be citizens of Banff either not operating businesses, and providing local services, or leaving town altogether.

Home occupancy based businesses will be playing a very important role in our future economy. This not to be underestimated.

Please consider the environmental impacts of home occupancy based businesses. An individual who lives in a house and rents office space has twice the environmental footprint as an individual who is active from his or her residence. Parks Canada and the Town of Banff both "boast" of the environmental sustainability – if either object to my appeal then one or the other, or both, are upholding a policy that requires me to double my environmental footprint. In other words, they are sacrificing environmental goals for a policy that home occupancy should not include Realtors. Which is it to be?"

Mr Bjorgum believes his proposed development meets the provisions of the Land Use Bylaw. He respectfully requests approval of his development appeal and understands that if his business ceased meeting the provisions of the Land Use Bylaw, his development permit would be cancelled.

Those in Favour of the Appeal

No one spoke in favour of the appeal.

Those Opposed to the Appeal

No one spoke in opposition to the appeal.

Development Officer's Response

The development officer provided the following comments:

- When this development permit application was originally considered by the Municipal Planning Commission, the applicant did not provide any evidence of community support. As part of today's appeal, Mr. Bjorgum has demonstrated that he has the support of his neighbours, his condominium board and other members of the community
- The development officer is of the opinion that the appellant has demonstrated compliance with Home Occupation regulations as set in section 10.1 of the Land Use Bylaw.
- Section 10.1.0 of the Land Use Bylaw does not restrict the type or location of home occupations. Also, even though section 10.1.5 specifically refers to the Municipal Planning Commission, the development officer believes that the Development Appeal Board has the jurisdiction to provide direction on whether real estate businesses are better located in the commercial district.

Appellant Rebuttal

Mr. Bjorgum could accept a decision that his proposed home occupation is not appropriate for a residential area. He would, however, question a decision that real estate offices are only appropriate in a commercial district.

Mr. Bjorgum told the Board that he is currently classified as a non-resident business by the Town and is charged business license fees accordingly. If his appeal is granted, he will be able to use his Banff address for his business address and then be classified as a resident business.

Board Discussion

The following information was provided in response to questions from Board members:

Mr. Bjorgum stated his current legal business address is a Canmore address. He will continue to maintain his office in Canmore even if his appeal is granted, however he will be able to provide the Securities Commission with a legal Banff address.

Administration confirmed that:

- The Land Use Bylaw does not prevent two home occupations from being approved at the same address.
- The written endorsement from Mr. Bjorgum's condominium association was not received before the Municipal Planning Commission made their decision.

- The Municipal Planning Commission surcharge has been paid.
- Home Occupation permits are reviewed and approved annually.
- Administration is not aware of any instance where an annual Home Occupation renewal has been denied, nor are they aware of any complaints ever being received about a Type 1 Home Occupation.
- The letters of support supplied to the Development Appeal Board by the applicant were not provided to the Municipal Planning Commission.
- The Municipal Planning Commission was of the opinion that discussions between the Town and Parks Canada discussion about commercial use and the issue of home occupations as a separate issue from this application. The Commission gave direction to administration to review this as part of the Land Use Bylaw review.

Motion to Continue Discussion In-Camera

DAB11-5 Moved by Taylor to go in camera at 9:50 a.m.

**CARRIED**

Motion to Leave In-Camera Discussion

DAB11-6 Moved by Murtha to return to the public meeting at 10:17 a.m.

**CARRIED**

Verbal Decision Announced

Appeal #05-10

It is the decision of the Development Appeal Board to uphold Appeal #05-10 and approve development permit application 10DP52 for a proposed Home Occupation Type 1 (Real Estate Sales Services). Our reasons for the decision are based on evidence submitted in support of the application including a letter of support of the application provided by the Rundlevue Housing Cooperative, a signed petition of 51 residents of the community in all of whom were in favour of the application, a signed statement of support from adjacent property owners and additional email submissions in support of the application. Development Appeal Board concurs with the appellant that the real estate sales service as proposed meets all of the provisions of Land Use Bylaw 31-4.

The Development Appeal Board also recommends that the Town of Banff consider the concerns expressed by Parks Canada as part of the Land Use Bylaw review/update presently underway, and strongly recommends that home occupation regulations be reviewed as soon as possible during that process.

**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**

DAB11-7 Moved by Murtha to adjourn the meeting at 10:25 a.m.

**CARRIED**

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Philip Carmody  
Chair

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Cheryl Hyde  
Recording Secretary