

MINUTES OF THE DEVELOPMENT APPEAL BOARD
of the Town of Banff in the Province of Alberta
Thursday, April 21, 2022

BOARD MEMBERS PRESENT

Grant Canning	Council Representative
Ray Horyn	Public Representative (Vice Chairperson)
Robin Tuck	Public Representative
Barbara McNeil	Public Representative (recused herself at 9:10a.m.)
Dak Kerr	Public Representative (Chairperson)
Sheila Luey	Parks Canada Representative
Kendra VanDyk	Parks Canada Representative

BOARD MEMBERS ABSENT

Ted Christensen	Council Representative
Lachlan Mackintosh	Public Representative

ADMINISTRATION PRESENT

Darren Enns	Director Planning and Development and Secretary to DAB
Dave Michaels	Manager Planner and Development
Kathleen Gallagher	Development Planner
Kerry MacInnis	Administrative Assistant Planning and Recording Secretary

PLEASE NOTE: Due to the extraordinary circumstances and measures being taken to slow the spread of COVID-19, this meeting will be held **electronically** and will be **live streamed** on www.banff.ca/live

1.0 CALL TO ORDER

Administration called the Thursday, April 21, 2022, Development Appeal Board hearing to order at 9:05 a.m.

The April 21, 2022, Hearing of the Development Appeal Board will be conducted virtually using Zoom and will be live streamed on the internet, and recorded, in accordance with Council Policy C8002-1, Video Recording and Live Streaming of Legislated Meetings. It will be made available on the Town of Banff website.

1.1. Appointment of Chairperson

DAB22-01 Moved by Ms. McNeil to appoint Mr. Kerr as Chairperson of the Development Appeal Board.

MOTION CARRIED

Minutes approved by: _____

- DAB22-02 1.2. Appointment of Vice Chairperson
Moved by Ms. McNeil to appoint Mr. Horyn as Vice Chairperson of the Development Appeal Board.

MOTION CARRIED

1.3. DAB Hearing Procedure Overview

Mr. Kerr introduced members of the development appeal board.
Mr. Enns introduced the municipal staff.
Mr. Kerr reviewed the DAB hearing procedures as included with this agenda package.

2.0 APPROVAL OF AGENDA

- DAB22-03 Moved by Mr. Kerr to approve the April 21, 2022, Development Appeal Board agenda as presented.

MOTION CARRIED

3.0 ADOPTION OF PREVIOUS MEETING MINUTES

- DAB 22-04 Moved by Ms. Luey to approve the minutes of the June 10, 2021, meeting of the Development Appeal as presented.

MOTION CARRIED

Mr. Kerr introduced the appeals #01-22 and #02-22.

Public Present Objecting to Any Board Member Hearing This Appeal

Mr. Poole asked if any board members, who work in real estate, if they had business with the seller or buyer of this property, 328 Muskrat Street.

Mr. Tuck and Mr. Horyn both stated that they have not had business dealings with either the seller or the buyer of this property, 328 Muskrat Street.

Councillor Canning stated that his job as a real estate appraiser, he has not had any business with the seller or buyer or the property in question, 328 Muskrat Street.

Mr. Poole did not have any objection with any board members hearing this appeal.

Minutes approved by: _____

Declaration of Conflict of Interest by Board Members

Ms. McNeil stated that she has a bias in this matter being that she has a strong interest in heritage and stated that she wouldn't be able to make an objective decision in this case. Ms. McNeil recused herself from hearing these appeals at 9:10a.m.

Notification to Affected Neighbours and Media Announcement

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

4.0 APPEALS - #01-22 and #02-22

- 4.1. Appeal has been filed with the Development Appeal Board hear the following appeals against a decision of the Development Officer on March 10, 2022, to approve a Development Permit for the proposed demolition of a structure at 328 Muskrat Street, Development Permit file 22DP02.

Appeal #01-22

Appeal by the appellant on the following grounds:

The proposed demolition has specific conditions that need to be revised pertaining to the Environmental Screening and environmental requirements mentioned in the General Conditions. The Incorporation Agreement links the Banff National Park Management Plan (2010) to the planning purposes of the Town of Banff. In implementing its core mandate that integrates heritage resource conservation, visitor experience and public appreciation and understanding, the Parks Canada Agency gives first priority to maintenance or restoration of ecological integrity.

Appeal #02-22

Appeal by the appellant on the following grounds:

The demolition permit fails to require adequate environmental and public health safeguards for the protection of natural freshwater resources, and adjacent neighbours and the surrounding community because of the demolition process. Additionally, the demolition will have an adverse impact on the character of our historically important neighbourhood. Therefore, the permit should be revoked.

Development Officer's Comments

Mr. Michaels spoke to the written information included in this agenda package.

Appellant Presentation

Appellant – Appeal #01-22

Mr. Poole requested that the board accept three additional exhibits: the Parks Management Plan, the Parks Canada interpretive signage from the Bankhead historical site and a Kidney House material board.

Mr. Nokes, appellant, stated he would like the board to accept Mr. Poole's additional exhibits.

Mr. Schmidtke, applicant, stated that the additional exhibits presented by Mr. Poole shouldn't be accepted by the board.

The board denied the submission of the additional exhibits from Mr. Poole.

Mr. Poole spoke to the written submission included in this agenda package.

Appellant – Appeal #02-22

Mr. Nokes spoke to the written submission included in this agenda package.

Those In Favor of the Appeal

None

Those Opposed to the Appeal

Mr. Hardy Schmidtke, applicant and owner of 328 Muskrat Street, spoke to the written submission included in this agenda package.

Development Officer's Comments

Mr. Michaels addressed points which the appellants had made in their presentations, and reiterated points included in the written material included in this agenda package.

Appellants' Rebuttal

Appellant – Appeal #01-22

Mr. Poole addressed the board and rebutted comments that were made by the applicant and the development planner.

Appellant – Appeal #02-22

Mr. Nokes address the board.



Board Questions

Asked and answered.

The board asked the applicant and appellants if they object to having Mr. Enns attend the in-camera discussion as the report writer for the board.

There was no objection to having Mr. Enns be the report writer for the board.

Motion to Continue Discussion In-Camera

DAB 22-05 Moved by Councillor Canning that pursuant to Sections 24 (advice from officials) of the Freedom of Information and Protection of Privacy Act and Section 3.2.12 of the Land Use Bylaw, DAB move into closed meeting at 11:42a.m., in the Council Boardroom, to deliberate and discuss confidential matters with respect to Appeals #01-22 and #02-22, the proposed demolition of a structure at 328 Muskrat Street, Development Permit file 22DP02.

MOTION CARRIED

Administration in attendance during the closed meeting discussions with respect to Appeals #01-22 and #02-22, the proposed demolition of a structure at 328 Muskrat Street, Development Permit file 22DP02.

Advice: D. Enns

DAB reconvened in public hearing at 1:32p.m., with Chairperson Kerr in the chair.

Motion to Leave In-Camera Discussion

DAB 22-06 Moved by Ms. Luey that the Board rise and report.

MOTION CARRIED



Verbal Decision Announced

In the matter of Appeals #01-22 and #02-22, appeals against the development officer's decision to approve the proposed demolition of a structure at 328 Muskrat Street, Development Permit file 22DP02. The board will be issuing a verbal decision today, and a written decision within 14 days, the latter of which will be the binding decision of the board.

The appeals considered today were against the decision of the Development Officer to issue a Development Permit for Demolition (Permit number 22DP02) at 328 Muskrat Street.

The Development Appeal Board works within the constraints of a legal framework that includes considerations for both Federal and Municipal legislation and policy. Our job is to be dispassionate observers and interpret the respective legislation to arrive at an outcome. This can be challenging when dealing with an emotional issue such as our community's built heritage, however that is the reality of our situation. With respect to the issuance of Development Permit 22DP02, the board could find no contravention of the Land Use Bylaw, National Parks Act, Banff National Park of Canada Management Plan, or other relevant legislation.

The board recognizes a number of concerns raised in the appeals around environmental considerations and the desire for certainty that all environmental obligations have or will be met.

The decision of the board is to deny the appeals but amend the conditions of the Development Permit by amending Condition 1(b) to add at the end.... and provide written confirmation from Parks Canada indicating that all the mitigations from the Determination of Significance of Impacts are met before, during and after demolition.

Policy discussions and debates around heritage resources are the purview of Council and not the Development Appeal Board. With that in mind, the Board recommends Council consider a standardized process through the Heritage Master Plan to conserve built heritage, and where that is not possible, document and record heritage assets.

In accordance with the Municipal Government Act, the decision of the Development Appeal Board is not final for 15 calendar days after concluding the hearing. The written decision together with reasons for the decision will be sent to the appellant and to those present who have identified themselves to the Recording Secretary by name and mailing address.

5.0 CORRESPONDENCE

There was no correspondence presented.

6.0 NEW BUSINESS

There was no new business.



7.0 INQUIRIES

There were no inquiries.

8.0 ADJOURNMENT

DAB 22-10 Moved by Ms. VanDyk to adjourn the meeting at 1:36p.m.

MOTION CARRIED

The Banff Development Appeal Board meetings are held only when an appeal has been received. Meetings are tentatively scheduled for the first and third Thursdays of each month.

Mr. Dak Kerr
Chairperson

Ms. Kerry MacInnis
Recording Secretary

Minutes approved by: _____