



Municipal District of Bighorn No. 8

No.2 Heart Mountain Drive, P.O. Box 310, Exshaw, Alberta T0L 2C0

Phone: (403) 673-3611 • Calgary Direct: (403) 233-7678

Fax: (403) 673-3895 • Email: bighorn@md.bighorn.ab.ca

DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: 1 Dec 16

Stop Order: dated 3 Nov 16, re Lot 2 Block 5 Plan 4822JK (6 Heart Rise, in Lac Des Arcs)
Andrew Sinclair/Dale Armstrong (on behalf of the Appellants/property owners)

I. Decision

For the reasons outlined below, the Board upholds the 3 November 16 Stop Order issued by the Director of Planning Services, to cease all illegal short-term rental accommodations within the dwelling on the above noted property, said accommodations which may include “bed and breakfast” and/or “Visitor Accommodations” uses, and related advertising, to the satisfaction of the M.D. of Bighorn.

In upholding the decision of the Director of Planning Services, the Board notes the two Land Use policies contained within the M.D.’s Municipal Development Plan:

11.6.3: The hamlet of Lac Des Arcs shall remain a residential community. The development of commercial land uses will be prohibited in order to maintain the existing character and lifestyle of the community.

11.6.5: Only those types of home-based businesses that are not evident to the public and do not impact the community or the amenities of the area, will be allowed. Bed and Breakfasts will not be allowed.

Under the definitions contained within the Land Use Bylaw:

“Bed and Breakfast” means a principal dwelling where sleeping accommodation, with or without light meals, is provided to members of the travelling public for remuneration, which is operated by the full-time residents of the dwelling.”

“Visitor Accommodation” means a building or group of buildings containing rooms or units, which are used for temporary lodging. A visitor accommodation unit shall not be occupied as a primary residence and no visitor or guest shall occupy one or more rooms or units for a period exceeding 75 days per annum. Typical visitor accommodation units or facilities may include, but is not limited to an inn, a hotel, a motel, cabins, or detached and attached buildings. Visitor accommodation uses shall in all cases be considered as a commercial land use for the purposes of municipal assessment and taxation.

II. Background

The Subdivision and Development Appeal Board (the “Board”) heard an appeal from Andrew Sinclair, with additional comments from Dale Armstrong, representing the owners of the above-noted property in Lac Des Arcs..

The subject property is located within the Hamlet Single Detached Residential District (“R-1”) portion of the Hamlet of Lac Des Arcs. It is noted that, within Part 3 Section 12 of the Land Use Bylaw pertaining to R-1 districts, there is no allowance for commercial activity/business uses; further (as noted above, second paragraph under Section I, Decision), there are two specific Land Use policies that restrict or prohibit commercial activities.

The appeal hearing by the Board was held on December 1st, 2016, at the M.D. Administration building in the Hamlet of Exshaw. The Appellants (Andrew Sinclair, and Dale and Stacy Armstrong) were present at the hearing. The Board heard from Messrs. Armstrong and Sinclair; the Board also heard from the Development Planner and Development Officer, one member of the gallery in support of the Stop Order (Ruben Nelson) and received two written submissions, one from a resident of the hamlet (M. Milne) and one from the Lac Des Arcs Community Association (G. Lock, President). Documents were submitted and provided to the Board, as follows:

- Board Secretary’s Case Outline/Overview;
- copy of the 3 Nov 16 Stop Order and letter from the M.D. of Bighorn Director of Planning Services;
- copy of the appeal letter from the Appellants, received 15 Nov 16;
- copy of a map showing the location of the Subject Property;
- copies of Part 1 Section 2 (Interpretations and Definitions), Part 3 Section 12 (Hamlet Single Detached Residential District), and Part C Section 11.6 (Hamlet of Lac Des Arcs Policies) of the Land Use Bylaw;
- submissions indicating support for the issuance of the Stop Order:

-M. Milne

-Lac Des Arcs Comm. Assoc. (G.Lock)

There were no submissions received in support of the Appellants.

The aforementioned documents are attached as Exhibits to the minutes of the hearing.

Issues Raised

The following issues were noted as being before the Board:

1. The Appellants stated they are not running a Bed and Breakfast (“B&B”), but are renting rooms out;
2. The Appellants stated that there are 12 buildings within an hour of this property that are rented out under a B&B arrangement;
3. The one appellant (D. Armstrong) noted that the Appellants view the property as a “failed lodge, and that they came in to use the property as foster parents;
4. The property once had a group of eight owners before the Appellants acquired it;
5. At the Appellant’s request, the M.D. had come out and inspected the property, to ensure the property would meet the Safety Code requirements for use as a foster home;
6. After the 2013 flooding, the Appellants had to re-build the house, and decided to end the fostering, moving to an arrangement with Banff Education.

Issues Raised – Board response

1. Bed and Breakfast

The Appellant noted that, while the Appellants are not running a B&B, they recognize that the Air BnB website does still show the property as being a B&B.

The Board made no comment on this.

2. 12 buildings in vicinity.

The number of B&B's within the vicinity did not factor into the Board's decision.

3. “Failed Lodge” and foster parent home

Given that both the “failed lodge” and foster home concepts were no longer in use, the Board did not consider these issues in its deliberations.

4. Previous Owners

The Board did not consider previous owners in its deliberations.

5. Inspection for foster home

The Board noted that, while the property may have been inspected for foster home Safety Code compliance, a development permit for same would have been needed.

6. Arrangement with Banff Education

The Board did not comment on the Banff Education issue.

III Reasons for Decision

The reasons for the Board's decision to uphold the Stop Order are:

- the Board believes that the use of the subject property is not in compliance with the R-1 guidelines, believing the use to be a commercial, not residential, one.
- the Appellants are contravening the rules of the Land Use Bylaw's Hamlet Single Detached Residential Land Use District (R-1), that being the “single family residential” nature of the zoning and property, and the Municipal Development Plan's Part C Section 11.6.3, which states “The Hamlet of Lac Des Arcs shall remain a residential community. The development of commercial land uses shall be prohibited in order to maintain the existing character and lifestyle of the community.”

IV Findings of Fact

The findings of fact are:

- The current use of the subject property contravenes the Land Use Bylaw requirements prescribed for the single family residential dwelling thereon.

December 5th, 2016

DATE



CHAIRMAN,
SUBDIVISION/DEVELOPMENT APPEAL BOARD

A decision of the Subdivision/Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon, or questions of jurisdiction or law pursuant to, Section 688 of The Municipal Government Act, SA 2000, as amended. An application for leave to appeal to the Appellate Division of the Court of Alberta shall be made to a judge of the Appellate Division within THIRTY (30) days after the issue of the order, decision, permit or approval sought to be appealed.