



Municipal District of Bighorn No. 8

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DECISION OF THE SUBDIVISION/DEVELOPMENT APPEAL BOARD

Hearing: June 1, 2017

Stop Order: Dated April 28, 2017, Lot 30, Block 7, Plan 1510262

(#228 River's Bend Close, Dead Man's Flats)

Bobby Richardson (Appellant)

I. Decision

For the reasons outlined below, the appeal to the Subdivision and Development Appeal Board (the "Board") by Bobby Richardson (the "Appellant") is ALLOWED IN PART and the Stop Order is UPHeld.

The decision of the Development Officer is upheld by the Board. The Board notes the Stop Order issued to the Appellant for the subject property (Lot 30, Block 7, Plan 1510262 - #228 River's Bend Close) pursuant to Section 645 of the Municipal Government Act for NON-COMPLIANCE with Section 14.6.1 of Land Use Bylaw 04/10.

The Board has varied the Stop Order and grants an extension of time for the Appellant to comply with the Order. Accordingly, the compliance date of the Stop Order is AUGUST 1, 2017.

II. Background

The subject property is located within the Hamlet Single Detached Serviced Residential District ("R-SH") in the River's Bend development in the Hamlet of Dead Man's Flats. On February 10, 2017, the M.D. approved Development Permit 60/17 for approval of a secondary suite to be operated within the residential dwelling located on the subject property. The approval was granted based on the submitted application meeting all requirements as outlined in Section 14.6.1 of Land Use Bylaw 04/10, specifically 14.6.1(a) and (c) noted below:

14.6.1 Secondary and Studio Suites

- (a) The registered owner of the primary residence must reside in the primary residence at all times that a property contains a secondary or studio suite.
- (c) The registered owner of the primary residence must provide a statutory declaration that the owner resides at the primary residence at the time that a development permit application is made for a secondary or studio suite.

As part of the development permit requirements, the Appellant submitted a sworn Statutory Declaration stating he was the owner of the subject property and that he resided in the residential dwelling on the subject property and it was his primary residence.

After the issuance of Development Permit 60/17, the M.D. began receiving complaints that the Appellant no longer lived at the subject property and the secondary suite was still operating in contravention of the Land Use Bylaw.

Meetings and correspondence between the Planning Department and Bylaw Services with the Appellant did not resolve the contravention and a Stop Order was posted on the subject property on April 28, 2017 and a letter issued to the Appellant on May 1, 2017.

The Stop Order contained two options for the Appellant to choose from in order to bring the subject property in compliance with Section 14.6.1 of Land Use Bylaw 04/10:

- a) Comply with the requirements outlined in Condition 6 of Development Permit No. 60/16; or
- b) Remove the second dwelling unit/secondary suite from the dwelling situated at 228 River's Bend Close in the Hamlet of Dead Man's Flats. Given a single detached dwelling may have bedrooms and sanitary facilities, these suite elements may remain in the dwelling. It is expected that the entire kitchen unit, including electrical wiring, will be removed, and there shall be no separate, lockable suite in existence.

The M.D. received an appeal to the Board from the Appellant dated May 12, 2017, to appeal the Stop Order on the grounds it was not properly issued.

The appeal hearing by the Board was held on June 1, 2017, at the M.D. Administration building in the Hamlet of Exshaw. The Appellant was present at the hearing. The Board heard from the Appellant (Mr. Richardson) and M.D. Development Officer, Janice Thompson.

Documents were submitted and provided to the Board, as follows:

- Board Secretary's Case Outline/Overview;
- copy of the April 28, 2017 Stop Order and letter from the Development Officer for the M.D. of Bighorn;
- copy of the appeal letter from the Appellant, received May 12, 2017;
- copy of a map showing the location of the Subject Property;
- copy of Part 3, Section 14 (Hamlet Single Detached Serviced Residential District R-SH),
- submissions indicating support for the issuance of the Stop Order:

Peter Sokolowski	Hamlet of Dead Man's Flats
Braiden and Kayla Leth	Hamlet of Dead Man's Flats
Mary Christie-Huerlimann and Ernie Huerlimann	Hamlet of Dead Man's Flats

- submissions indicating support for the Appellant.

Brandon Douglas (tenant)	Hamlet of Dead Man's Flats
Kate Boyd (tenant)	Hamlet of Dead Man's Flats
Peter Graul	Hamlet of Dead Man's Flats
Jenny Mckenzie	Canmore (Property in DMF)

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 Stop Order issued by the Development Officer dated April 28, 2017;
2. The Stop Order was issued on the subject property because the use of the property contravenes the Land Use Bylaw, Section 14.6.1 (a);
3. The Stop Order contained two options for the Appellant to chose from in order to rectify the contravention and bring the subject property into conformance with the Land Use Bylaw;
4. The Appellant (Bobby Richardson), the registered owner of the property, no longer resides at the subject property and is still operating a secondary suite. Mr. Richardson currently resides at 221 River's Bend Close;
5. The Appellant stated he was given an unreasonable amount of time to comply with the Stop Order dated April 28, 2017;
6. The Stop Order was hand delivered to the Applicant on May 1, 2017 with a compliance date of May 1, 2017;
7. The Appellant was aware of the contravention and secured long term leases for the tenants in the secondary suite and main portion of the residential dwelling on the subject property;
8. The Appellant stated he did sign statutory declaration and that he resided at the subject property prior to moving to 221 River's Bend Close;
9. The Appellant stated he wished to wait until the Land Use Bylaw review was completed and would comply with the Bylaw once the review was complete.

Issues Raised – Board response

The Board deliberated on issues 1 to 9 raised in the hearing.

The Board sought clarification on issue 9. The Board asked when the Land Use Bylaw review would be completed. The Secretary to the SDAB responded the date was May 2018.

III Reasons for Decision

The reasons for the Board's decision to uphold the Stop Order and allow part of the appeal are as follows:

- the Board believes that the use of the subject property is not in compliance with the R-SH regulations of the Land Use Bylaw.
- the Appellant is contravening Section 14.6.1(a) of the R-SH land use district.
- pursuant to Section 645 of the Municipal Government Act the Stop Order was issued to the Appellant for NON-COMPLIANCE with Section 14.6.1(a) of Land Use Bylaw 04/10.
- the compliance date of May 1, 2017 on the Stop Order, did not allow the Appellant sufficient time to comply with the Stop Order.

- the Stop Order to be varied to August 1, 2017.

IV Findings of Fact

The findings of fact are:

- The current use of the subject property contravenes Part 3, Section 14 (Hamlet Single Detached Serviced Residential District R-SH) of Land Use Bylaw 04/10.
- The Stop Order dated April 28, 2017 had a compliance date of May 1, 2017. The Appellant was not allowed sufficient time to comply with the Stop Order.

June 15, 2017
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.