



**SUBDIVISION & DEVELOPMENT APPEAL BOARD ORDER**

**PRELIMINARY HEARING INFORMATION**

**PL20220278**

15 Pinewood Crescent

Lot 27, Block 3, Plan 7910758

Preliminary hearing to determine validity of appeal against an approval by the Canmore Development Authority.

ORDER OF THE SUBDIVISION & DEVELOPMENT APPEAL BOARD OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, DATED JANUARY 17, 2023.

Board Members Hearing the Preliminary Matter: Mr. Peter Moreland-Giraldeau (Chair), Mr. John McClure (Vice Chair), Mr. Christoph Braier, Mr. H. Fraser MacIver

AND IN THE MATTER of the Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26, as amended (the "**MGA**");

AND IN THE MATTER of a preliminary hearing to determine the validity of an appeal by David Clancy against an approval by the Canmore Development Authority.

This preliminary hearing having been duly opened before the Subdivision & Development Appeal Board on January 5, 2023 at 2.00 p.m.

AND UPON hearing oral submissions from the Appellant and Development Officer.

AND UPON having regard to the Town of Canmore Land Use Bylaw No. 2018-22 (Bylaw), the MGA and other relevant planning documents.

**RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS:**

**1. Municipal Government Act (MGA)**

The following sections are of relevance to the preliminary hearing of this appeal:

- a. **Section 642(2)**, of the MGA states when a person applies for a development permit regulated by a land use bylaw the Development Authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.
- b. **Section 685(2)** of the MGA states that in addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a



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development authority may appeal the decision in accordance with subsection (2.1). (2.1) An appeal referred to in subsection (1) or (2) may be made... (b) in all other cases, to the subdivision and development appeal board.

- c. **Section 686(1)** of the MGA states that a development appeal is commenced by filing a notice of the appeal, containing the reasons, with the board hearing the appeal (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw

**2. Land Use Bylaw (LUB)**

The following sections are of relevance to the preliminary hearing of this appeal:

- a. **Section 1.10.4.5** of the LUB states that when an application for a Development Permit is approved for a Discretionary Use or for a Permitted Use in which a variance has been granted, the Development Authority shall:
- i. Provide a Notice of Decision to the applicant of the approval;
  - ii. Require the applicant to post the Notice of Decision conspicuously for a period of not less than 21 days on the property for which the application has been made;
  - iii. Publish a Notice of Decision in a local newspaper;
  - iv. State the procedure for any appeal and the date the appeal period expires, which shall be 21 days following the Notice of Decision being posted on the property; and
  - v. Issue a Development Permit after the appeal period has expired, subject to any additional amendments or information that may be required for submittal and review by the Development Authority.

**FINDINGS OF FACT:**

The following timeline of events was undisputed:

- **On October 27th, 2022**, the Development Authority emailed the Applicant the Notice of Decision and Schedule A, approving the proposed development with conditions. The applicant provided photographs of the Notice of Decision being posted on the property at 15 Pinewood Crescent on the same day (see Attachment I - Notice of Decision Property Posting Confirmation)
- **On November 16th, 2022**, a completed Notice of Appeal Application Form was received by the SDAB Clerk, absent of any fee payment for the appeal.
- **On November 17th, 2022**, the SDAB Clerk provided the potential appellant with instructions on how to submit payment to the Town. No response received.



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- **On November 29th, 2022**, the Development Authority issued the Development Permit (See Attachment 2).
  
- **On December 9th, 2022**, payment is received from appellant.

**SUMMARY OF ARGUMENTS PRESENTED:**

**Appellant:**

The Appellant's position is that the required Notice of Appeal was filed on a timely basis.

**Applicant:**

The Applicant's position is that the required Notice of Appeal was not filed on a timely basis because the fee was not paid within the 21-day period and that the SDAB lacks the authority to extend the timeline.

**Town of Canmore (the 'Town'):**

The Town's position is that the required Notice of Appeal was not filed on a timely basis because the fee was not paid within the 21-day period and that the SDAB lacks the authority to extend the timeline.

**DECISION:**

The SDAB Board orders that the appeal filed for PL20220278 was filed in a timely manner and is valid. Therefore, the SDAB has jurisdiction to hear the appeal on its merits.

**REASONS:**

1. The appellant satisfied the conditions outlined in the Municipal Government Act (MGA) for the filing of a valid Notice of Appeal. The Notice of Appeal was filed within the 21-day period and included reasons for the appeal.
2. While the SDAB acknowledges the Town's right to charge a fee, it disagrees with the Town's position that receipt of the appeal fee within the 21-day deadline is a pre-condition to a valid Notice of Appeal.
3. The Board's position is based on the precedence of the MGA, and the rights of appeal granted therein, over Town policies regarding fees.
4. It is the position of the SDAB that payment of the appeal fee is not a required element for a valid appeal under the MGA. A valid appeal can not be invalidated through failure to pay the administrative appeal fee.



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**Date Signed**

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**CHAIRPERSON PETER MORELAND-GIRALDEAU**  
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**IMPORTANT INFORMATION FOR APPELLANTS**

This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the Municipal Government Act, R.S.A. 2000, c. M-26.