

**From:** [Janice Agrios](#)  
**To:** [Allyssa Rygersberg](#)  
**Cc:** [Adam Driedzic](#); [Cheryl Hyde](#)  
**Subject:** RE: independent counsel for Canmore SDAB  
**Date:** June 30, 2023 12:34:47 AM

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Hi Allyssa – My comments are as follows:

1. In the present case, there is a water body adjacent to the site. Along the end of the water body that is adjacent to the site, there is an existing retaining wall.
2. According to AEP, the proposed setback variance from the water body is acceptable as long as the retaining wall is in place. In order to allow the retaining wall to stay in place, a Licence of Occupation (DLO) under the *Public Lands Act* is required.
3. AEP has indicated that a *Water Act* approval will not be needed provided that certain conditions are met (essentially no impact on the water body).
4. A DLO is granted for the use of public land (in this case, the bed and shore of the waterbody). As such, given that a DLO is required for the retaining wall, this means that the retaining wall is not located on the site, but rather is located on public land. This appears to be consistent with the survey, which shows the retaining wall as outside the property line of the site.
5. Section 685(2.1)(a)(i)(D) of the MGA provides that an appeal may be made to the LPRT where the land that is the subject of the application is the subject of a licence, permit, approval or other authorization granted by the Minister of the Environment and Protected Areas. Section 685(2.1)(a) of the MGA refers to **land** that is the subject of the licence,

permit, approval or other authorization. In this case, as the retaining wall is not located on the site, the land that is the subject of the application is not the subject of the DLO. Therefore, even though the DLO may be required as a condition of approval of the development, the requirement for the DLO does not engage Section 685(2.1)(a) of the MGA.

6. It should be noted that Section 685(2.1)(a)(i)(B) of the MGA relating to land that is adjacent to a body of water no longer applies pursuant to Section 27 of the *Matters Related to Subdivision and Development Regulation*.
7. In light of the foregoing, the SDAB has authority to hear the appeal.

If you or the SDAB have any questions, please let me know.

Janice Agrios

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**From:** Allyssa Rygersberg <allyssa.rygersberg@canmore.ca>

**Sent:** Wednesday, June 28, 2023 8:53 AM

**To:** Janice Agrios <JAgrios@kaolawyers.com>

**Cc:** Adam Driedzic <adam.driedzic@canmore.ca>; Cheryl Hyde <cheryl.hyde@canmore.ca>

**Subject:** RE: independent counsel for Canmore SDAB

You don't often get email from [allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca). [Learn why this is important](#)

Hi Janice,

The Board had drafted this email and sent it to me:

“The SDAB panel for Application PL20220268 (<https://canmore.ca/documents/5588-20230623-agenda-for-pl20220286>) has identified a potential issue with our jurisdiction and are hoping for some legal guidance to clarify our position. The panel is concerned with the jurisdictional interplay between local SDABs and the LPRT.. The hearing was adjourned on Friday, June 23rd, to facilitate this request for advice.

The following is a brief set of facts relevant to this request:

The Application is for a development permit for a Duplex with Attached Accessory Dwelling Units

located at 634 7th St (Lot 9, Block 71, Plan 1095SF)

The property is adjacent to a provincial waterway (Spring Creek) which is contained by a retaining wall to the east of the subject property (p 26 of SDAB package).

The Province has consulted on the proposed development as it relates to the waterway. Based on email correspondence with AEP on November 23, 2021, an approval is required under the Public Lands Act in the form of a DLO to ensure that the retaining wall structure remains in place (p 79 of SDAB package) -- we understand that this process is currently underway.

Any guidance you can provide would be greatly appreciated and we are open to any suggestions regarding next steps.”

## **Allyssa Rygersberg**

Deputy Municipal Clerk

Town of Canmore

[allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca)

403-678-1549

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**From:** Janice Agrios <[JAgrios@kaolawyers.com](mailto:JAgrios@kaolawyers.com)>

**Sent:** Tuesday, June 27, 2023 9:12 PM

**To:** Allyssa Rygersberg <[allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca)>; Cheryl Hyde <[cheryl.hyde@canmore.ca](mailto:cheryl.hyde@canmore.ca)>

**Cc:** Adam Driedzic <[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)>

**Subject:** RE: independent counsel for Canmore SDAB

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Hi Allyssa – I have reviewed the documents. Does the SDAB have a specific question pertaining to jurisdiction? Or do they just want some general advice in terms of what they can and can't do?

Janice Agrios

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**From:** Allyssa Rygersberg <[allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca)>

**Sent:** Tuesday, June 27, 2023 4:31 PM

**To:** Janice Agrios <[JAgrios@kaolawyers.com](mailto:JAgrios@kaolawyers.com)>; Cheryl Hyde <[cheryl.hyde@canmore.ca](mailto:cheryl.hyde@canmore.ca)>

**Cc:** Adam Driedzic <[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)>

**Subject:** RE: independent counsel for Canmore SDAB

You don't often get email from [allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca). [Learn why this is important](#)

Hi Janice,

The Board has indicated that they are fine to receive written advice once you have reviewed the file.

Please see the attached documents pertaining to appeal PL20220286.

Let me know if you require any additional information. The 15-day period for when the Board needs to have a decision ends on July 8<sup>th</sup>.

Thank you,

**Allyssa Rygersberg**

Deputy Municipal Clerk

Town of Canmore

[allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca)

403-678-1549

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**From:** Jolene Noel <[jolene.noel@canmore.ca](mailto:jolene.noel@canmore.ca)>  
**Sent:** Tuesday, June 27, 2023 8:00 AM  
**To:** Janice Agrios <[JAgrios@kaolawyers.com](mailto:JAgrios@kaolawyers.com)>; Adam Driedzic <[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)>  
**Cc:** Allyssa Rygersberg <[allyssa.rygersberg@canmore.ca](mailto:allyssa.rygersberg@canmore.ca)>  
**Subject:** RE: independent counsel for Canmore SDAB

Hello,

Thank you for including me, however, the Municipal Clerks Office has taken over Clerk duties for the SDAB. Although I did sit in on this hearing, it was only for training purposes.

I have cc'd Allyssa to this email as she was the Clerk to this hearing and is in communication with the Board on this matter.

Kind regards,  
Jolene

**Jolene Noël** | Development Assistant  
[www.canmore.ca/planning](http://www.canmore.ca/planning)

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**From:** Janice Agrios <[JAgrios@kaolawyers.com](mailto:JAgrios@kaolawyers.com)>  
**Sent:** Monday, June 26, 2023 8:23 PM  
**To:** Adam Driedzic <[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)>  
**Cc:** Jolene Noel <[jolene.noel@canmore.ca](mailto:jolene.noel@canmore.ca)>  
**Subject:** RE: independent counsel for Canmore SDAB

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Hi Adam – Yes – I can be available but am a bit limited. I start a 2 day hearing tomorrow so if the Board wants to meet, it would have to be on Thursday. On

the other hand, if it is a situation where I could review the file and provide written advice, then I could take a look tomorrow or Wednesday evening and get back to Jolene with written advice.

Janice Agrios

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**From:** Adam Driedzic <[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)>  
**Sent:** Monday, June 26, 2023 4:21 PM  
**To:** Janice Agrios <[JAgrios@kaolawyers.com](mailto:JAgrios@kaolawyers.com)>  
**Cc:** Jolene Noel <[jolene.noel@canmore.ca](mailto:jolene.noel@canmore.ca)>  
**Subject:** independent counsel for Canmore SDAB

Hi Janice,

Are you available to advise the Canmore SDAB on a question of jurisdiction? The hearing opened and was adjourned to get a legal opinion. It is scheduled to reconvene on Friday.

I have copied in Jolene Noel the acting SDAB Clerk as your contact for service delivery.

Thanks,

-Adam

**Adam Driedzic**

Town Solicitor

Town of Canmore

403.678.1553

[adam.driedzic@canmore.ca](mailto:adam.driedzic@canmore.ca)

[www.canmore.ca](http://www.canmore.ca)

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