

**TOWN OF CANMORE**

**AGENDA**

Special Meeting of Council  
Council Chambers at the Civic Centre, 902 – 7 Avenue  
**Tuesday, November 29, 2022 at 9:00 a.m.**

Times are estimates only.

**PUBLIC QUESTION PERIOD – Before meeting is called to order**

**A. CALL TO ORDER AND APPROVAL OF AGENDA**

9:00 – 9:05

1. Land Acknowledgement
2. Agenda for the November 29, 2022 Special Meeting of Council

**B. PUBLIC HEARINGS - None**

**C. DELEGATIONS - None**

**D. APPROVAL OF MINUTES - None**

**E. BUSINESS ARISING FROM THE MINUTES - None**

**F. UNFINISHED BUSINESS - None**

9:05 – 9:35

**G. BYLAW APPROVAL**

1. Bylaw 2022-27 Land Use Bylaw Amendment – Staircase Lands

Recommendations:

1. That Council give first reading to Bylaw 2022-27 – Land Use Bylaw Amendment – Staircase Lands.
2. That Council schedule a public hearing for Bylaw 2022-27 for February 28, 2023.

**H. NEW BUSINESS - None**

**I. REPORTS FROM ADMINISTRATION - None**

**J. NOTICES OF MOTION - None**

**K. IN CAMERA - None**

9:35

**L. ADJOURNMENT**



# Request for Decision

**DATE OF MEETING:** November 29, 2022 **Agenda #:** G1

**TO:** Council

**SUBJECT:** Bylaw 2022-27 - Land Use Bylaw Amendment – Staircase Lands

**SUBMITTED BY:** Adam Driedzic, Town Solicitor

**RECOMMENDATION:** That Council give first reading to Bylaw 2022-27 and schedule a public hearing for February 28, 2023.

## EXECUTIVE SUMMARY

The Alberta Court of Kings Bench has ordered the Town of Canmore to commence proceedings to acquire the upper triangle of the Staircase Lands or redesignate these lands to Future Development District. Council has resolved to redesignate the lands to Future Development District to comply with the Court Order. The redesignation requires an amendment to the Land Use Bylaw through the process provided by the *Municipal Government Act* (MGA).

## RELEVANT COUNCIL DIRECTION, POLICY, OR BYLAWS

The decision of the Court of Kings Bench (formerly the Court of Queens Bench) in *Three Sisters Mountain Village Properties Ltd v. Canmore (Town)* [2022 ABQB 511, Court file: 2101 07730 ] was based on Section 644 of the MGA which concerns the acquisition of land designated for public use. Administration reported to Council on the Court's reasons for decision on August 16, 2022. Council made a unanimous resolution directing administration to:

- acquire the upper portion of the Staircase Lands to satisfy the decision of the Court of Queen's Bench; and
- report on detailed options for implementing this decision [Resolution 200-2022].

Through litigation counsel, administration made an offer to acquire the lands. The landowner, through litigation counsel, rejected this offer. In mid-October of 2022, the Court issued its finalized Order which requires the Town to commence proceedings to acquire the land or to rezone the land to Future Development District. Administration returned to Council on November 1, 2022, seeking a resolution to commence expropriation, or redesignate the lands to Future Development District. Council made a unanimous resolution directing administration to:

- bring a Land Use Bylaw amendment application to redesignate the upper triangle of the Staircase Lands to Future Development District and that the first reading of the bylaw amendment occur no later than November 29, 2022, and that the public hearing on the bylaw amendment, if required, occur no later than March of 2023. [Resolution 270-2022].

**DISCUSSION**

**Unique circumstances:** There is a lack of precedent to guide the Town on implementing the Court Order. The Staircase Lands is likely the first reported court decision on Section 644 of the MGA in its current form. The Court’s Reasons for Decision recognized that Section 644 is a unique provision within the MGA that has received little judicial consideration to date. Administration consulted with two planning advisors at the ministry of Municipal Affairs, neither of whom were aware of any precedents of a court ordering a municipality to adopt a specific land use district.

**Need for Council decision:** Redesignating the upper triangle of the Staircase Lands to Future Development District requires an amendment to the Land Use Bylaw. Neither Section 644 of the MGA nor the Court Order provide for this process. The general provisions of the MGA for making a Land Use Bylaw amendment will apply. Sections 202 and 203 of the MGA provide the authority to make bylaws to Council and prevent Council from delegating this authority to administration. Section 187 of the MGA provides that every proposed bylaw must have three distinct and separate readings. Section 189 and 313 provide that a bylaw is passed when it receives third reading and is signed by the presiding officer and a designated officer.

**Need for a public hearing:** Section 692(1) of the MGA requires a public hearing before second reading of a proposed bylaw amending a land use bylaw. Both planning advisors at Municipal Affairs with whom administration consulted were of the view that a public hearing is required. Administration has sought a formal opinion from the Town’s external legal counsel on the requirement for a public hearing. Preliminary consultation supports the requirement for a public hearing.

**Representations at the public hearing:** Section 692(1) requires a public hearing to be accordance with [section 216.4](#). Section 216.4(4) provides that, in the public hearing, Council:

- (a) must hear any person, group of persons or person representing them who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and
- (b) may hear any other person who wishes to make representations and who the council agrees to hear.

**Open mind:** Common law principles require municipal councillors hearing an application to have an open mind capable of being persuaded. The test to ascertain bias on the part of councillors is more liberal when the decision of council is more legislative in nature as compared to when it has more of a judicial element. Some pre-disposition is inherent in the role of an elected councillor when performing a legislative function. On an application for a bylaw, councillors are not disqualified for bias due to having previously made strong position statements or previous decisions that are relevant to the matter at hand. Disqualifying bias arises where previous statements of councillors are a final opinion that cannot be dislodged, and representations of different views would be futile. All seven councillors in the matter have demonstrated an open mind to date, as the resolution of August 16<sup>th</sup> was unanimous to acquire the land and the resolution of November 1<sup>st</sup> was unanimous to rezone. The Court Order predates Council’s resolution of November 1<sup>st</sup> so does not render this resolution irreversible in some way that prevents councillors from having an open mind on the bylaw application. Council can alter its own resolutions and all councillors have shown interests in options other than rezoning to Future Development.

**Discretion:** Section 216.4(5) provides that after considering the representations made at the public hearing and after considering any other matter it considers appropriate, Council with may (a) pass the bylaw, (b) make any amendment to the bylaw it considers necessary, or (c) defeat the bylaw. The matter at hand does not provide Council with the full range of alternatives to pass, amend, or defeat the bylaw provided by Section 216.4 of the MGA. Section 216.4 is a provision of general application to all bylaws that require a public hearing. The power to make land use bylaws and the specific limits on this power are provided by Part 17 through the MGA. Under Part 17, Section 644 of the MGA sets a specific limit on zoning power. The Court applied this limit, and the only redesignation option that it provided to the Town is Future Development District. Administration recommends that Council not follow representations in support of other rezoning options and that it not defer any readings of the bylaw to consider other rezoning options.

**Corporate duties:** The respondent in the Court action was the municipal corporation, not Council. The effect of the Court Order is to limit the options for legal compliance on the part of the municipal corporation. Under these circumstances, Council must consider that it is not solely accountable to the electorate or to any specific constituency. Council also functions much like the board of directors of the municipal corporation and has fiduciary duties to look after the interests of the corporation. This relationship is reflected in Section 142 of the MGA which makes Council the governing body of the municipality and Section 153 which puts a duty on individual councillors to consider the welfare and interests of the municipality as a whole. The need to either expropriate or rezone makes the municipal corporation entirely dependent on Council for compliance with the Court Order and MGA. Administration is incapable of achieving legal compliance for the corporation on this matter without actions of Council. This fiduciary obligation further supports exercising discretion only in ways that fit the options in the Court Order.

#### ANALYSIS OF ALTERNATIVES

**Expropriation:** If the public hearing involves representations in favor of expropriation as the means to comply with the Court Order, then this is relevant to the matter before Council, and it is foreseeable that councillors with an open mind will consider this option. If so, councillors should consider that the deadline in the Court Order has past and that the opportunity to commence expropriation proceedings on November 1<sup>st</sup> will have been delayed by commencing the bylaw application. If the catalyst for expropriation is representations at the public hearing, then the resolution to expropriate should be made immediately after concluding the hearing rather than proceeding to second reading of the bylaw. Administration has already recommended the expropriation resolution and it has already been deliberated by Council on November 1<sup>st</sup>:

That Council direct administration to commence expropriation proceedings for the portion of the Staircase Lands zoned Natural Park District under Land Use Bylaw 2018-22, being a portion of the parcel legally described as Meridian 5; Range 10; Township 24; Section 29 by filing, serving and publishing a Notice of Intention to Expropriate

Council must not defeat the bylaw application without commencing expropriation proceedings. Defeating the bylaw without commencing expropriation proceedings will put the Town out of compliance with the Court Order by having no active proceedings to implement the options provided by the Court Order.

**Postpone:** If Council prefers to take time to consider the input from the public hearing, the decision could be postponed, but will need to come back quickly as action should be taken no later than March of 2023 in order to comply with the Court Order.

**FINANCIAL IMPACTS**

Costs for rezoning are nominal, as described in the Request for Decision of August 16, 2022 and November 1<sup>st</sup>, 2022. If Council were to reconsider expropriation based on the input received at the public hearing, Administration would need to consider funding options. The approved 2022 capital project budget for TSMVPL litigation was based on direct legal costs and did not include major land acquisitions. At the time of the Request for Decision of August 16, 2022, there were sufficient funds to pursue an acquisition of the upper triangle of the Staircase Lands at or around the appraised value obtained by the Town. There will be insufficient funds in the current litigation project budget for expropriation of the Staircase Lands while engaging in the other TMSVPL litigations. If Council resolves to expropriate, then Administration will use the TSMVPL litigation capital project to fund the expropriation costs and will return to Council at a later date with a funding proposal for any costs that exceed the budget amount.

**STAKEHOLDER ENGAGEMENT**

None.

**ATTACHMENTS**

- 1) Bylaw 2022-27 Land Use Bylaw Amendment – Staircase Lands

**AUTHORIZATION**

Submitted by:	Adam Driedzic Town Solicitor	Date: <u>November 18, 2022</u>
Approved by:	Sally Caudill Chief Administrative Officer	Date: <u>November 18, 2022</u>



**BYLAW 2022-27**

**A BYLAW OF THE TOWN OF CANMORE, IN THE PROVINCE OF ALBERTA, TO  
AMEND REVISED LAND USE BYLAW 2018-22**

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The Council of the Town of Canmore, in the Province of Alberta, duly assembled, enacts as follows:

**TITLE**

- 1 This bylaw shall be known as the “Land Use Bylaw Amendment – Staircase Lands.”

**INTERPRETATION**

- 2 Words defined in revised Land Use Bylaw 2018-22 shall have the same meaning when used in this bylaw.

**PROVISIONS**

- 3 Revised Land Use Bylaw 2018-22 is amended by this bylaw.
- 4 Map 3 of Land Use Bylaw 2018-22 is amended in accordance with Schedule A of this bylaw.

**ENACTMENT/TRANSITION**

- 5 If any clause in this bylaw is found to be invalid, it shall be severed from the remainder of the bylaw and shall not invalidate the whole bylaw.
- 6 Schedule A forms part of this bylaw.
- 7 This bylaw comes into force on the date it is passed.

FIRST READING:

PUBLIC HEARING:

SECOND READING:

THIRD READING:

Approved on behalf of the Town of Canmore:

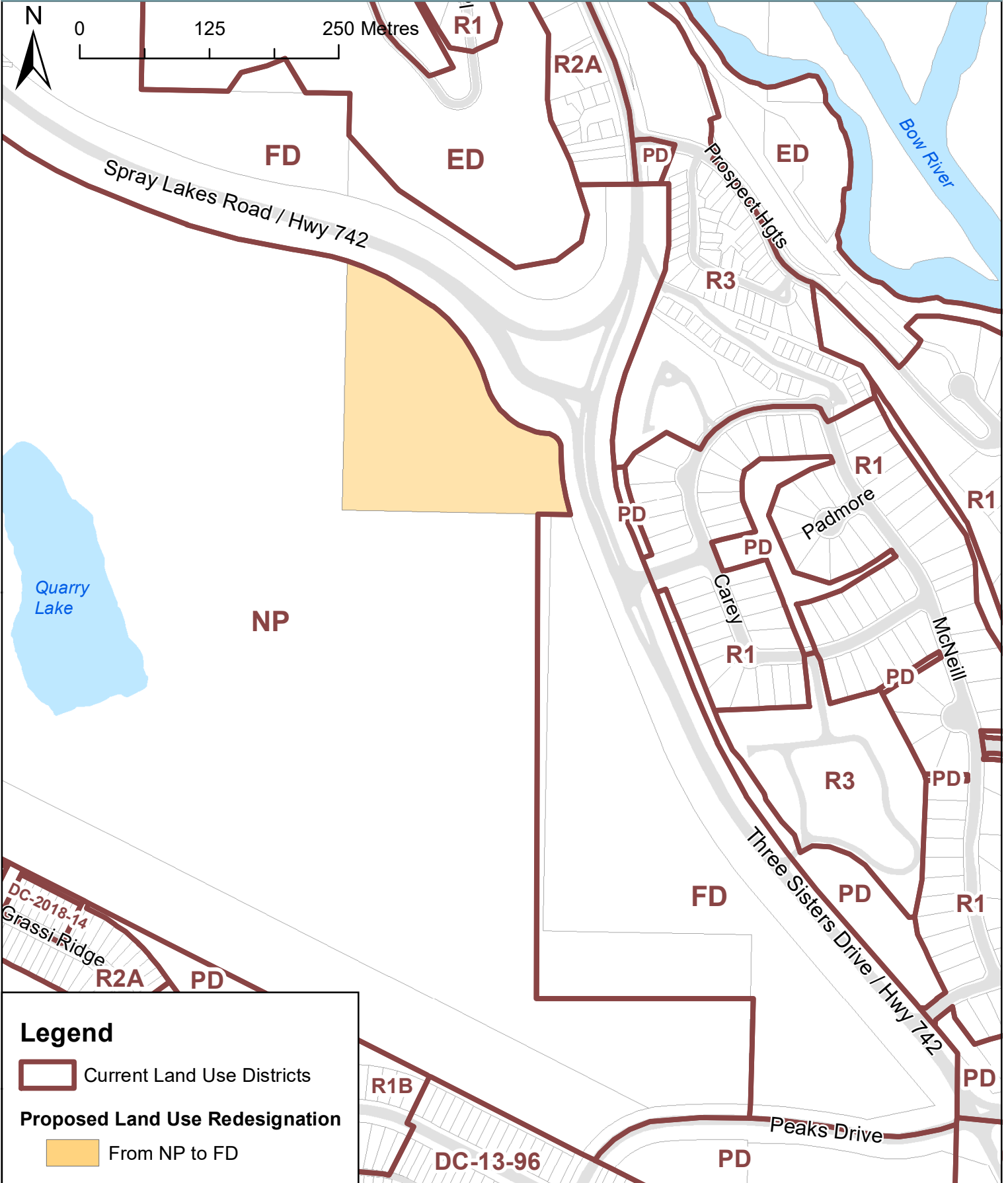
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Sean Krausert  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl Hyde  
Municipal Clerk

\_\_\_\_\_  
Date


# Schedule A: Bylaw 2022-27



## Legend

 Current Land Use Districts

### Proposed Land Use Redesignation

 From NP to FD