



## SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION

### **CEZONE202300011**

133 Wapiti Close

Lot 76, Block 2, Plan 9811923

Operation of a Tourist Home without a Development Permit

Appeal against a stop order issued by the Canmore Development Authority

Appeal by: Hans Herchen  
Jennifer Sykes (Agent)

Appeal against: Town of Canmore Development Authority

Hearing date(s): June 12, 2024 & June 27, 2024

Decision date: July 5, 2024

Board Members: Andre Giannandrea, Chair  
John McClure, Vice Chair  
Peter Moreland-Giraldeau, Vice Chair  
Larry Bohn  
Karen Marra, Councillor

Administration: Ben Stiver, Clerk  
Cheryl Hyde, Clerk  
Sara Jones, Clerk  
Eric Bjorge, Planning and Development Supervisor  
Jerritty Cloney, Development Officer  
Greg Burt, Municipal Enforcement Supervisor  
Richard Barnes, Community Peace Officer

### **DESCRIPTION OF THE APPLICATION**

1. The Board heard an appeal from Hans Herchen against a stop order issued by the Canmore Development Authority for the operation of a Tourist Home withing a Development Permit.

### **DECISION**

2. The appeal is denied and **Stop Order CEZONE202300011** is confirmed with the Remedies to Stop Order varied to state the following:

**Remedies to Stop Order**

Pursuant to Section 645(2) of the *Municipal Government Act*, on **July 5, 2024** you are hereby ordered to take the following actions:

- 1) Cease all use of the lands and buildings on the Property as a Tourist Home.
- 2) Provide the Town with evidence that you have ceased all operation and advertisement of the property as a Tourist Home by:
  - a. Consenting to inspections of the Property (including the lands and within all buildings) and photographs to be taken thereof. The first inspection is to take place no later than one week from July 5, 2024, that being on or before July 12, 2024 and subsequent inspections may be carried out subject to 48 hours notice provided by the Town, and
  - b. Preparing a Statutory Declaration by the owner(s) of the Property and submitting to the Development Authority no later than one week from July 5, 2024, that being on or before July 12, 2024, declaring that they have ceased all operation and advertisement of the property as a Tourist Home, as defined by the Town of Canmore Land Use Bylaw 2018-22 and that, without limiting the generality of the foregoing, they will not allow or permit:
    - i. any vacations rentals of the property or Dwelling units at the property;
    - ii. non-residents, who provide any compensation to the owners, to stay at the property for short-term vacation purposes;
    - iii. commercial use of the property for short-term vacation purposes;
    - iv. management or advertising of the property as a tourist Home or “vacation property”; and/or
    - v. use of a system of reservations, deposits, confirmations, credit cards or other forms of electronic payment in relation to the property.
- 3) Provide the Town with evidence, to the satisfaction of the Development Authority, that all reservations after July 5, 2024 to use the property as a Tourist Home, have been cancelled.

**RELEVANT STATUTORY & PLANNING DOCUMENT PROVISIONS**

3. Bylaw 2019-06, the Town of Canmore Subdivision and Development Appeal Board Bylaw, in general.

4. Municipal Government Act RSA 2000 c. M-26 (MGA) in general and specifically:
  - a. Section 645
  - b. Section 685
  - c. Section 686
  - d. Section 687
5. Municipal Development Plan Bylaw 2016-03 (MDP) in general and specifically, Map 2 – Conceptual Land Use.
6. Land Use Bylaw 2018-22 (LUB) in general and specifically:
  - a. Section 13
  - b. Section 1.8.0.1
  - c. Section 1.4.0.2
  - d. Section 8.6
  - e. 1.10.0.4

#### **PRELIMINARY MATTERS**

7. The hearing commenced on June 12, 2024 with consideration of a request from the appellant to adjourn the hearing. The Board adjourned the hearing until June 27, 2024.
8. There were no objections to any Board members present hearing the appeal.
9. There were no objections to the hearing process as described by the Chair.

#### **SUMMARY OF HEARING**

10. Jerritt Cloney, Development Officer, spoke on behalf of the Development Authority to a written report circulated in the agenda package, presented slides, and answered questions from the Board.
11. Jennifer Sykes, the agent for the appellant, and Hans Herchen, the appellant, provided a verbal submission:
  - a. The Appellant does not dispute the general substance of the Stop Order and intends to comply with it.
  - b. Online advertising of the property as a tourist home has been removed.
  - c. The request is that the Board vary the effective date of the Stop Order from May 18, 2024 to September 9, 2024 so the Appellant may honour pre-existing reservations.

12. The following members of the public spoke in opposition to the appeal:
- a. Cole Mostert, adjacent neighbour.
  - b. Glen Phillips, adjacent neighbour, written submission provided.

13. The following written submissions were received in opposition of the appeal:
- a. Andrew Barron and Rosemary Neil, adjacent neighbour.
  - b. Bruce Matthews and Nancy Fraser, adjacent neighbour.
  - c. Rob Owens, adjacent neighbour.
  - d. Glen Phillips, adjacent neighbour.
  - e. Barb and Paul Pigott, adjacent neighbour.

14. All persons who made representations agreed they had a fair hearing.

### REASONS FOR DECISION

15. The Board is satisfied that the stop order was properly issued by Municipal Enforcement. The agent for the Appellant also confirmed they have no concerns with how the stop order was issued.
16. The property is zoned R1 and Tourist Homes are neither a permitted nor a discretionary use in the R1 district.
17. This is the appellant's second offence for operating an illegal Tourist Home at 133 Wapiti Close. The appeal against stop order BE2017-128, Non-Conforming Use: Illegal Tourist Home was denied, and the stop order was upheld in 2018. Given the history of illegal use, the Board wishes assurance that no further contraventions of the Land Use Bylaw will be committed.
18. The Board accepts the evidence and testimonials provided by the adjacent property owners that the tourist home is having an adverse effect on neighbourhood amenities.

7/5/2024 | 8:29 AM MDT

**Date Signed**

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**Andre Giannandrea, Chair**

**Subdivision & Development Appeal**

In accordance with section 688 of the Municipal Government Act, this decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction within 30 days after the issue of the decision.