



# City of Moose Jaw

## COMMUNICATION # CC-2019-0172

**TITLE:** Appeal of Decision of the Development Appeals Board

**TO:** City Council

**FROM:** Department of Planning and Development Services

**DATE:** September 11, 2019

**PUBLIC:** PUBLIC DOCUMENT

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### **RECOMMENDATION**

THAT City Council direct Administration to file an appeal to the Saskatchewan Municipal Board regarding the decision of the Development Appeals Board for 459 Lillooet Street West.

### **TOPIC AND PURPOSE**

The purpose of this report is to receive direction to pursue an appeal of the decision of the Development Appeals Board for 459 Lillooet Street West.

### **BACKGROUND**

Section 226(1) of *The Planning and Development Act, 2007* allows City Council to appeal any decision of the Development Appeals Board to the Saskatchewan Municipal Board within 30 days of receipt of the Record of Decision. Administration believes that the Development Appeals Board has erred in their consideration of the appeal application, and that the subsequent decision should be appealed. Any decision of the Development Appeals Board is subject to Section 221(d) of *The Planning and Development Act, 2007* which states that the decision will not:

- i) Grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
- ii) Amount to a relaxation so as to defeat the intent of the zoning bylaw; or
- iii) Injuriously affect the neighbouring properties.

The Development Appeals Board is under a statutory duty to consider these tests when reviewing an appeal application.

## **DISCUSSION**

A Development Permit application was received in early June 2019 for a new detached garage at 459 Lillooet Street West. The proposed garage would measure 24 ft by 68 ft for a total floor area of 1,632 ft<sup>2</sup>. The application was denied on June 24<sup>th</sup>, 2019 on the basis that it did not meet the size requirements for accessory buildings under the Zoning Bylaw. The applicant appealed the denial of the Development Permit, and the appeal was heard before the Development Appeals Board on August 28<sup>th</sup>, 2019. A Record of Decision from the Board was issued on August 30<sup>th</sup>, 2019, stating that the appeal was granted. The Board believed that granting the appeal would not contradict the three tests that are imposed by *The Planning and Development Act, 2007*.

A similar appeal for this property was heard before the Development Appeals Board on August 15<sup>th</sup>, 2017 and was denied on August 21<sup>st</sup>, 2017. The application at that time was for a detached accessory building measuring 24 ft by 70 ft, for a total floor area of 1,680 ft<sup>2</sup>. The decision of the Appeals Board was appealed to the Saskatchewan Municipal Board, who upheld the decision. It was stated that granting the appeal would provide a special privilege to the applicant, be contrary to the intent of the Bylaw, and would cause injurious affect to the neighbouring properties. The Saskatchewan Municipal Board believed that granting the appeal would not align with the requirements under *The Planning and Development Act, 2007*.

In the Record of Decision from August 30<sup>th</sup>, 2019, the Board stated that granting the appeal would align with the three tests prescribed by the Act. This decision is contrary to the opinion of the Saskatchewan Municipal Board in 2018. Administration believes that this new decision should be appealed, as it sets a precedent for future appeals in Moose Jaw.

## **OPTIONS TO RECOMMENDATION**

- City Council may decide not to pursue an appeal of this decision

## **PUBLIC AND/OR STAKEHOLDER INVOLVEMENT**

A Notice of Appeal was circulated to property owners within 75 metres of the subject property prior to the meeting of the Development Appeals Board. Two responses were received in support of the application.

## **OFFICIAL COMMUNITY PLAN**

The general goals of the City's Official Community Plan are to direct development and growth in Moose Jaw in a manner that:

- a) Ensure efficient use of land and municipal infrastructure (efficiency);
- b) Maintains a positive relationship with environmental values and resource capabilities (sustainability);
- c) Enhances economic diversity and security (diversity and security);
- d) Provides for equity in land use decisions and fair distribution of community services (equity); and
- e) Enhances Moose Jaw's identity as a place to visit, to locate or expand a business, to work and to live (identity).

One of the objectives of the "Residential Land Use and Housing" section of the OCP states:

*c) To ensure that dwellings, accessory buildings and lots are constructed and maintained to acceptable standards.*

### **FINANCIAL IMPLICATIONS**

A \$50 application fee is required for an appeal to the Saskatchewan Municipal Board.

### **PUBLIC NOTICE**

Public Notice pursuant to the Public Notice Policy is not required.

### **PRESENTATION**

VERBAL: The Director of Planning and Development Services will provide a brief overview of the report.

### **ATTACHMENTS**

- i. Attachment 1 – Record of Decision of the Development Appeals Board dated August 30<sup>th</sup>, 2019;
- ii. Attachment 2 – Report from Planning and Development Services dated July 31<sup>st</sup>, 2019;
- iii. Attachment 3 – Appeal Application dated June 26<sup>th</sup>, 2019;
- iv. Attachment 4 – Property Owner Responses;
- v. Attachment 5 – Permit Application;
- vi. Attachment 6 – Record of Decision of the Saskatchewan Municipal Board dated February 15<sup>th</sup>, 2018.

### **REPORT APPROVAL**

Written by: Veronica Blair, Planner 1  
Reviewed by: Tracy Wittke, Assistant City Clerk  
Approved by: Michelle Sanson, Director of Planning and Development  
Approved by: Jim Puffalt, City Manager  
Approved by: Fraser Tolmie, Mayor

*To be completed by the Clerk's Department only.*

Presented to Regular Council or Executive Committee on \_\_\_\_\_.

No. \_\_\_\_\_ Resolution No. \_\_\_\_\_

## Report Approval Details

Document Title:	Request to Appeal Decision of the Development Appeals Board - CC-2019-0172.docx
Attachments:	<ul style="list-style-type: none"><li>- Attachment 1 - Record of Decision Appeal No. 10 - 2019.docx</li><li>- Attachment 2 - 459 Lillooet St W - DAB report.docx</li><li>- Attachment 3 - Appeal Application - 459 Lillooet St W.pdf</li><li>- Attachment 4 - Letter 1.pdf</li><li>- Attachment 4 - Letter 2.pdf</li><li>- Attachment 5 - Development Permit Application.pdf</li><li>- Attachment 6 - SMB Record of Decision.pdf</li></ul>
Final Approval Date:	Sep 16, 2019

This report and all of its attachments were approved and signed as outlined below:

**No Signature - Task assigned to Sue Brabant was completed by workflow administrator Maureen Latta**

Sue Brabant



Michelle Sanson



Tracy Wittke



Jim Puffalt

A handwritten signature in black ink, appearing to read "Fraser Tolmie". The signature is written in a cursive, flowing style.

Fraser Tolmie