

TOWN OF BANFF
ORDER OF BUSINESS
Public Hearing
Town of Banff Council Chambers
Thursday, April 25, 2013 at 1:00 p.m.

1.0 CALL TO ORDER

2.0 PUBLIC HEARINGS

2.1 Bylaw 320 – Land Use Bylaw Amendment – Commercial Use Development Allotment Transferability

- 2.1.1 Opening of Public Hearing for Bylaw 320
- 2.1.2 Explanation of the Public Hearing Process
- 2.1.3 Confirmation of Advertising and Notice of Hearing (Verbal)
- 2.1.4 Staff Report
- 2.1.5 Public Input Verbal Presentations Bylaw 320
 - 2.1.5.1 Fuji Starlight Express Ltd.
 - 2.1.5.2 Other members of public who register to speak at hearing
- 2.1.6 Public Input Written Submissions Bylaw 320
 - 2.1.6.1 Motion from the April 10, 2013 meeting of the Municipal Planning Commission
 - 2.1.6.2 Comments received from the Connect 2013 public open house
 - 2.1.6.3 Other written submissions received before the end of the public hearing
- 2.1.7 Council Question Period
- 2.1.8 Closing or Adjournment of Public Hearing for Bylaw 320

2.2 Bylaw 321: Land Use Bylaw Amendment – Existing Commercial Gross Floor Area Transferability

- 2.2.1 Opening of Public Hearing for Bylaw 321
- 2.2.2 Explanation of the Public Hearing Process
- 2.2.3 Confirmation of Advertising and Notice of Hearing (Verbal)
- 2.2.4 Staff Report
- 2.2.5 Public Input Verbal Presentations
 - 2.2.5.1 Fuji Starlight Express Ltd.
 - 2.2.5.2 Other members of public who register to speak at hearing
- 2.2.6 Public Input Written Submissions
 - 2.2.6.1 Motion from the April 10, 2013 meeting of the Municipal Planning Commission
- 2.2.7 Council Question Period
- 2.2.8 Close or Adjournment of Public Hearing for Bylaw 321

Public Hearing Process

1. Opening of Public Hearing

The Mayor will state the purpose of the public hearing and call for a motion to open the public hearing. The Mayor will ask administration to confirm that the required advertising and notice of hearing requirements have been met.

2. Staff Report

A member of administration will provide a brief context for, and background of the bylaw. The content of the bylaw is not discussed at this point.

3. Public Submissions – Verbal

The Mayor will call on the people who have registered to speak. The Mayor will determine the order of speakers. All members of the public that wish to speak shall be afforded an opportunity to speak. All speakers shall be given a 5 minute time frame. Speakers may indicate if they are supportive, not supportive, or neutral to the bylaw.

The public hearing may be adjourned to a later time and date to accommodate all members of the public that wish to speak. Members of council will ask questions of clarification if required.

4. Public Submissions - Written

The Mayor will ask the recording secretary if any written submissions, not included in the agenda package, were received. These names of those providing the public submissions will be read into the record and the written submissions will be added to the public record.

5. Council Question Period

Council may ask questions of clarification to administration or those in attendance.

6. Close or Adjournment

The Mayor will ask for a motion to close the public hearing or to adjourn the hearing until a specified date and time.

After the public hearing is closed Council is not permitted to receive any further submissions regarding the bylaw.

Control and Conduct of Meetings

Council's role at the public hearing is to listen to the public. Council does not debate or challenge the comments being offered, but may question what they hear to make sure they understand what is being said. Council will not debate the merits of the proposed bylaw nor enter into dialogue with speakers at the public hearing.

Members of the public who wish to speak at the hearing are asked to register prior to the start of the public hearing.

The Mayor will advise persons addressing council that they should give their name and address, and indicate if they are speaking on their own behalf, or for a client, company, organization or other group.

No person shall address Council without the permission of the Mayor.

Member of the public who constitute a gallery during the public hearing:

- Shall speak in a respectful manner and shall address council;
- Shall directly address the item on the agenda and not repeat themselves or address matters irrelevant to the public hearing;
- Shall maintain order and quiet; and
- Shall not interrupt any speech or action of members of council or any other member of the public that is addressing council.

The mayor may at any public hearing, cause to be expelled and excluded any person who creates any disturbance or acts improperly during a meeting.

Council will not debate the merits of the proposed bylaw nor enter into dialogue with speakers at the public hearing.

REQUEST FOR DECISION

**Subject: Land Use Bylaw Review; Phase 2(c)
Transferability of Commercial Use Development
Allotments**



Presented to: Council

Date: March 25, 2013

Submitted by: Darren Enns, Senior Planner

Agenda #: 8.1

RECOMMENDATION

That Council give first reading to Bylaw 320 and schedule a public hearing for Monday, April 22nd, 2013 at 2:00 pm.

BACKGROUND

Reason for Report

The Land Use Bylaw has incorporated a provision for the transferability of Commercial Use Development Allotments (CDAs) since 2005 (*Town of Banff Bylaw 230*). The existing transferability mechanism is limited with respect to eligibility. Administration is recommending its scope be enlarged as part of the Land Use Bylaw review to help facilitate redevelopment and reinvestment in commercial properties.

Summary of Issue

Since the inception of Growth Management regulations, Federal and Municipal public policy have affirmed that the Town of Banff may expand its commercial gross floor area by 32,516 square metres (350,000 square feet) of additional development. This floor area is distributed through the Commercial Use Development Allotment (CDA) process as outlined in Section 9 of the current Land Use Bylaw.

Successful applicants in the CDA process have a set time limit (currently 5 years) within which the development process must commence. It is not uncommon for applicants to reconsider their development plans within this window of time, and on occasion pull back from the development process. When this occurs, the only option available is to wait for the CDA to expire. CDA transferability would present an additional option for applicants who are in this position.

Current Situation

Currently the Land Use Bylaw allows for the transferability of a CDA in two instances:

1. Only if the CDA is *coming from* a property which has a partial allotment, and *going to* a property which has a partial allotment (“Partial-to-Partial”); or,
2. Only if the CDA is *coming from* a property which has a partial allotment, and *going to* a property which has been unsuccessful in securing an allotment (“Partial-to-Unsuccessful”).

Since the introduction of the transferability mechanism, only one transfer has ever been implemented.

Proposed Situation

Administration has drafted amending Bylaw 320, which would allow transferability of CDAs to occur within a defined framework. Of note:

- CDA transferability would be opened up to any CDA, partial or full;

- An entire CDA, or a portion(s) of a CDA may be transferred;
- CDAs allocated to a property in the CS (Commercial Service) land use district would remain in that land use district. This is referred to as the “like-for-like” provision;
- CDA transferability applications should be supported with documentation to ensure that all participants (Donator, Receiver, Town) are clear on what is being transferred, and what the downstream implications are; and,
- CDA transferability has no effect on the expiry date of the CDA or the square metres allocated.

Administration has expressed concern in the past about the role of CDA “speculators” increasing with increased transference tools (e.g. bidders looking to secure CDAs simply to re-sell). These concerns remain, however they are closely linked to the ever-diminishing volume of CDAs available.

Response Options

Council may give first reading to amending Bylaw 320 as presented, defer until additional information is received, propose amendments, or choose not to pass first reading.

IMPLICATIONS OF DECISION

Budget

There are no significant budgetary implications related to first reading. One aspect of this legislation that Council may be interested in is the commodification of CDAs through the transfer process. Administration believes that this is a likely outcome of any transference system. However, Municipal involvement in the commodification of floor area transferability has been avoided in this legislation.

Schedule G (Development Fees) of the Land Use Bylaw would require amending should Council wish to institute a fee for processing CDA transfers.

Communication

The Municipal Government Act (MGA) requirements regarding advertising for public hearings would be followed. This subject matter was also available for public review at the Town’s Open House held on March 14th, 2013. Administration are also liaising with Parks Canada and stakeholder groups in the business community regarding this Bylaw.

Banff Community Plan

Local Economy

- *Commercial development will occur within the legislated commercial growth cap.*
- *Establish commercial land use policies and development regulations to ensure Banff will continue to prosper.*
- *Encourage capital reinvestment in existing commercial space.*

Social

- *Encourage the retention, restoration, rehabilitation and re-use of existing heritage buildings.*

Council Strategic Priorities

The Land Use Bylaw review has been identified as a Council Priority.

ATTACHMENTS

- Amending Bylaw 320

Circulation date: _____

Submitted By: _____
Darren Enns, Senior Planner

Reviewed By: _____
Robert Earl, Town Manager

TOWN OF BANFF

BYLAW 320

Town of Banff Land Use Bylaw Amending Bylaw – Commercial Use Development Allotment Transferability

A BYLAW TO AMEND TOWN OF BANFF LAND USE BYLAW WITH RESPECT TO COMMERCIAL USE DEVELOPMENT ALLOTMENT TRANSFERABILITY

NOW THEREFORE the Council of the Town of Banff, in the Province of Alberta, duly assembled, ENACTS AS FOLLOWS:

1. This bylaw may be cited as the “Land Use Bylaw Amendment - Commercial Use Development Allotment Transferability.”
2. Town of Banff Land Use Bylaw, as amended, is hereby amended by:
 - a) deleting Section 9.4.0 Transferability in its entirety and replacing it replaced with the following:

9.4.0 Commercial Use Development Allotment Transferability

- 9.4.1 Any commercial use development allotment or portion thereof that has been awarded may be assignable or transferable to another parcel or development under the provisions of this section.
- 9.4.2 The transfer of a commercial use development allotment that has been awarded to a parcel or development within the CS Land Use District may only be transferred to another parcel or development within the CS Land Use District.
- 9.4.3 The development officer shall review and decide upon all applications to transfer a commercial use development allotment, or a portion of a commercial use development allotment.
- 9.4.4 An application for the transfer of a commercial use development allotment shall include five copies of the following information for the site which is to receive the transfer:
 - a. Context Plan (minimum scale of 1:500 metric) showing the location of the property, adjacent streets and land use districts;
 - b. Site Plan showing legal description and municipal address of property, labelled property lines, bylawed property line setbacks, location and size of existing buildings, dimensioned layout of existing and proposed parking areas, entrances, exits, and public thoroughfares, adjacent line of curb, street and lane, and outline to scale of adjacent buildings on adjoining sites;

- c. A detailed written description of the proposed building program (type of development, site area, existing and proposed gross floor area by use, floor area ratio, site coverage) parking and housing required;
- d. Plans showing the proposed elevations and floor plans;
- e. A detailed written description of the design approach to be used relative to the Banff Design Guidelines; and
- f. Landscaping Plan based on the Site Plan showing the existing topography with the vegetation that is to be retained and that to be removed, the layout of soft and hard landscaping, pedestrian circulation and open space, screening, slopes and retaining walls.

9.4.5 An Application Notification Sign is required for any application to transfer a commercial use development allotment. The notification sign must conform to Section 4.4.0 of the Land Use Bylaw.

9.4.6 The development officer shall within 30 days of the date of decision provide written confirmation to those applicants involved in a transfer of the decision and its effective date.

9.4.7 The expiry date is linked to the original date of receipt of the commercial use development allotment and will not be affected by any transfer.

- 3. 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.
- 4. This bylaw comes into force after the date of final passing, upon approval and execution by the Superintendent, Banff National Park, for the Minister of the Environment.
- 5. The Town Manager is authorized to consolidate Town of Banff Land Use Bylaw, as amended.

READ A FIRST TIME this xx day of month, 20xx.

Pursuant to the Municipal Government Act (Alberta), a PUBLIC HEARING was held this xx day of month, 20xx.

READ A SECOND TIME this xx day of month, 20xx.

READ A THIRD TIME this xx day of month, 20xx.

SIGNED AND PASSED this _____ day of _____, 20xx.

Karen Sorensen
Mayor

Robert Earl
Town Manager

APPROVED by the Minister of the Environment, by his delegate this ____ day of _____, 20xx:

Minister of the Environment/Delegate

MINUTES OF THE MUNICIPAL PLANNING COMMISSION
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Wednesday, April 10, 2013 at 9:00 a.m.

COMMISSION MEMBERS PRESENT

David Bayne	Public Representative (Chair)
Pat Roi	Public Representative
Bill Squarebriggs	Public Representative (Vice Chair)
Steve Beaton	Public Representative

COMMISSION MEMBERS ABSENT

Grant Canning	Council Representative
Brian Standish	Council Representative
Anne-Marie Puccini	Minister of the Environment Representative
Jay Harris	Public Representative
Vacancy	Administration (non-voting)

ADMINISTRATION PRESENT

Randall McKay	Manager of Planning and Development (Secretary)
Darren Enns	Senior Planner
Chad Townsend	Environmental Services Coordinator
Kerry MacInnis	Administrative Assistant, Planning and Development (Recorder)

1.0 CALL TO ORDER

The Chair of Municipal Planning Commission called the April 10, 2013 regular meeting of Municipal Planning Commission to order at 9:01 a.m.

2.0 APPROVAL OF AGENDA

MPC13-15 Moved by Squarebriggs to approve the April 10, 2013 meeting of the Municipal Planning Commission agenda as amended.

Add: 7.1 (a) Bylaw 320 – Commercial Development Allotment Transferability (update)
7.1 (b) Bylaw 321 – Existing GFA Transferability (update)
7.2 Notice of Motion by Council - Section 4.7.1 Variance Test (update)
7.3 344 Banff Avenue – update on the approved development permit

CARRIED

3.0 ADOPTION OF PREVIOUS COMMISSION MINUTES

MPC13-16 Moved by Squarebriggs to approve the minutes of the March 13, 2013 meeting of the Municipal Planning Commission as presented.

CARRIED

Minutes approved by: _____

4.0 UNFINISHED BUSINESS

There was no unfinished business.

5.0 REPORTS

5.1. Proposed Home Occupation Type 2 (13DP11) at 432B Muskrat Street

Mr. Roland Clark, the applicant was present in the gallery to answer questions from the commission.

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC13-17 Moved by Squarebriggs that the Municipal Planning Commission (MPC) approves development permit application 13DP11 for a proposed Home Occupation Type 2 (tour sales service) subject to the conditions of approval attached as Appendix 'A'.

Appendix 'A'

(1) General Conditions:

- (a) No variation from the residential character and appearance of land or buildings shall be permitted;
- (b) No structural change to any building for the purpose of accommodating a Home Occupation shall be permitted;
- (c) No offensive noise, vibration, smoke, dust, odours, heat, glare, electrical or radio disturbance shall be produced by the Home Occupation;
- (d) At all times the privacy and enjoyment of adjacent dwellings shall be preserved and the Home Occupation shall not adversely affect the amenities of the neighbourhood;
- (e) Not more than 10% of the gross floor area of the principal building shall be used for a Home Occupation;
- (f) The Home Occupation shall not occupy a required parking space;
- (g) The Home Occupation shall not generate more than two clients to the site from which the occupation is being operated at any given time;
- (h) The Home Occupation shall not generate any pedestrian or vehicular traffic or parking in excess of that which is characteristic of the neighbourhood within which it is located;

- (i) No exterior storage or operation of the Home Occupation shall be permitted;
- (j) No signs advertising Home Occupations are permitted;
- (k) Only one other person other than resident of the principal residence shall be engaged in a Home Occupation Type 2;
- (l) Not more than one commercial vehicle with a gross vehicle weight rating of no more than 3500 kg. used in conjunction with the Home Occupation, shall be parked or maintained on the site of a Home Occupation Type 2;
- (m) A Home Occupation Type 2 shall not involve the sale or display of any goods on the site other than those goods constituting the finished principal product of the Home Occupation;
- (n) A Home Occupation shall not be permitted, if in the opinion of the Municipal Planning Commission, it would be more appropriately located in a commercial district;
- (o) The applicant shall obtain a valid Town of Banff Business Licence. Please contact the Business Licence Clerk at Town Hall or by telephone at 403.762.1215; and
- (p) The Development Permit is valid for a period not to exceed the lesser of the term of the Business Licence or a period of one year from the date of issuance.

CARRIED

5.2. Proposed Community Greenhouse (13DP12) at 316 Marten Street

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC13-18

Moved by Beaton that the Municipal Planning Commission (MPC) approve development permit application 13DP12 for the proposed development of a Community Recreation Service addition to the existing commercial and residential building 316 Marten Street, subject to the conditions of approval attached as Appendix A.

Appendix "A" – Recommended Conditions of Approval

- (1) Conditions to be met prior to the issuance of the Development Permit and Building Permit:

Minutes approved by: _____

- (a) Submit detailed servicing and drainage plans for any required on and off-site services, which shall include sewer, water, electrical and gas facilities for review and approval by Town of Banff Engineering.
- (b) Provide a list of the sub-contractors (attached form) to be employed in the construction of your development to Business Licensing, Corporate Services Department.
- (c) Apply for a building permit for construction of the community greenhouse.
- (2) General Conditions:
 - (a) All landscaping and site works related to the development shall be completed within six (6) months of the date of issuance of any required occupancy permit and thereafter permanently maintained in good condition
 - (b) Any changes to the approved plans following issuance of the Development Permit shall be approved by the Development Officer prior to implementation on-site
 - (c) Protect all existing services, including landscaping, on adjacent roadways and properties during demolition and construction. Assume responsibility and repair all damages to any existing services and landscaping on adjacent roadways and properties.
 - (d) Management of all uncontaminated (clean) soil excavated from the site shall be arranged through Parks Canada. Contractors must obtain a Restricted Activity Permit for disposal of clean fill at the Cascade Pit. Permits and further direction may be obtained by contacting Banff Dispatch at 762-1470.
 - (e) Apply for a Street Use Permit from the Manager of Engineering at least 48 hours prior to any work on Town streets, lanes or sidewalks.
 - (f) Develop the following, as may be required, all to Municipal standards:
 - (i) Construction of new sanitary sewer, storm sewer and water connections including the removal, relocation or cutting off of any redundant connection(s);
 - (ii) Construction and repair of concrete sidewalks, curb and gutter and new driveway crossings including the closing of any redundant crossing; and
 - (iii) Construction and repair of street and lane surfacing.
 - (iv) All exposed metal flashing, mechanical equipment and flues shall be coordinated to match the building colour.
 - (g) All signs require separate Development Permit approval

- (h) It is the responsibility of the project proponent to ensure that all mitigation measures identified in the environment assessment, Phase 1 ESA, and guidelines identified in the Parks Canada's Environment Guidelines for Development Projects in Banff National Park (Directive 17) are implemented during demolition and construction. The project proponent shall ensure that any hazardous materials discovered prior to or during demolition or excavation are immediately reported to Parks Canada and properly disposed of according to current regulations.

CARRIED

6.0 CORRESPONDENCE

There was no correspondence presented.

7.0 NEW BUSINESS

7.1 (a) Land Use Bylaw 320 – Commercial Development Allotment Transferability
Administration provided a verbal update on this.

MPC13-19 Moved by Squarebriggs that the Municipal Planning Commission support Land Use Bylaw 320 as presented with the addition that all CDA Transfers be approved by MPC with consideration of the goals and objectives of the Banff Community Plan and the Land Use Bylaw.

CARRIED

7.1 (b) Land Use Bylaw 321 – Existing GFA Transferability
Administration provided a verbal update on this.

MPC13-20 Moved by Bayne that the Municipal Planning Commission support Land Use Bylaw 321 as presented with consideration of the goals and objectives of the Banff Community Plan and the Land Use Bylaw.

CARRIED

7.2 Notice of Motion – Section 4.7.1 Variance Test
Administration provided a verbal update on this.

7.3 344 Banff Avenue – request for information regarding this approved development
Administration answered questions from the commission regarding this approved development.

In light of the recent decision regarding 13DP06 on 344 Banff Avenue, Squarebriggs gave a notice of motion that at the next meeting of MPC on May 8, 2013, discussions take place regarding existing apartment housing parking ratios and amenity spaces.

8.0 INQUIRIES

There were no inquiries.

9.0 DATE OF NEXT MEETINGS/ADJOURNMENT

The next regularly scheduled meeting of the Municipal Planning Commission is scheduled for Wednesday, May 8, 2013 at 9:00 a.m.

MPC13-21 Moved by Squarebriggs to adjourn the meeting at 10:44 a.m.

CARRIED

David Bayne
Chair

Kerry MacInnis
Recording Secretary

Additional feedback on PS lands
or Commercial Space
Transferability?

CDA holders who
do not use their
build right not only
should not be able
to transfer it, but
should be penalized -
with funds going to
Community enhancement
ie arts, streets

Drop in our box, or at
the front desk of Town Hall

Additional feedback on PS lands
or Commercial Space
Transferability?

CDA'S - should not be
transferable.
CS district should not
be part of commercial dev
- unused CDA should go
back into the pool to be
drawn for

Drop in our box, or at
the front desk of Town Hall

Additional feedback on PS lands
or Commercial Space
Transferability?

have the ^{approval} process -
go through MPC or
what other commission
is in place @ the time

Drop in our box, or at
the front desk of Town Hall

Additional feedback on PS lands
or Commercial Space
Transferability?

NO RETROACTIVE
CDA TRANSFERABILITY

Drop in our box, or at
the front desk of Town Hall

Additional feedback on PS lands
or Commercial Space
Transferability?

CDA's should ~~not~~
be transferable
because they will
create modification
The value of the space
belongs to the community
not the lease holders.

Drop in our box, or at
the front desk of Town Hall

REQUEST FOR DECISION

**Subject: Land Use Bylaw Review; Phase 2(c)
Transferability of Existing Commercial Gross Floor
Area (GFA)**



Presented to: Council

Date: March 25, 2013

Submitted by: Darren Enns, Senior Planner

Agenda #: 8.2

RECOMMENDATION

That Council give first reading to Bylaw 321 and schedule a public hearing for Monday, April 22nd, 2013 at 2:00 pm.

BACKGROUND

Reason for Report

The Land Use Bylaw has incorporated a provision for the transferability of Commercial Use Development Allotments (CDAs) since 2005 (*Town of Banff Bylaw 230*). However no provision has ever been made for the transferability of existing Commercial Gross Floor Area (GFA). As the Town approaches commercial build out, transferability of existing floor area from a “donating” property to a “receiving” property may become a useful tool for property owners to acquire new square footage through a peer-to-peer transaction. However unlike the transferability of un-built floor area (CDAs), the transference of already constructed GFA has to address the challenging issue of what becomes of the donating space.

Summary of Issue

The ability to move existing Commercial Gross Floor Area from one site to another is a simple concept, but creates a number of complexities which must be addressed in order to ensure the goals of both the community and the private parties involved are addressed. Administration believes that the core issues of the concept are as follows:

1. What floor area qualifies for a transfer?
2. What becomes of the donating floor area?
3. What is the impact on privately-owned heritage buildings?
4. What about the commodification of transferable space?

This report will attempt to address these four key issues.

Current Situation

Currently the Land Use Bylaw does not envision the transference of existing Commercial Gross Floor Area (GFA). When existing Gross Floor Area is demolished, it is permitted to be reinstated in the same amount.

Eligible Commercial Gross Floor Area

Establishing a clear set of criteria for transferring existing Commercial Gross Floor Area is an important first step in any legislative amendments. The transference of existing Commercial Gross Floor Area must involve a “donating” or source property, and a “receiving” or destination property. Each of these properties must exist within one of Banff’s six commercial land use districts. Some basic rules which administration believes should underpin any transfer process include:

1. The receiving property must be able to accommodate the donated floor area under the Land Use Bylaw’s density regulations;

2. The transfer of floor area must occur within the legislated commercial growth cap; and,
3. The transfer process must be as open, transparent, and appealable as with the current Development Permit process.

The question of “what is available to transfer” is intended to be addressed partly through a subsequent Council or administrative policy. Once the potential pool of existing Commercial Gross Floor Area is established it appears logical that this pool would be available for commercial use, either on the existing site or through a transfer to another site.

The Donating Property

Supposing that eligible donating space has been identified and a receiving property has been found, the next issue to address is what becomes of the donating property. It is administration’s belief that two potential outcomes exist; Conversion or Demolition. Each have their own unique set of considerations.

Conversion

Conversion is the process of converting the donating space to another use which does not fall under the umbrella of “Commercial Use”. Two possible conversion avenues exist:

1. Conversion to a land use which does not require a Commercial Use Development Allotment; or,
2. Conversion to a GFA exempt space.

Conversion to Non-Commercial Use

The first route is to convert the donating space to a non-commercial use. The Land Use Bylaw defines *Commercial Use* as (author’s emphasis):

Commercial Use means any land use, except housing or institutional or government service, which is a permitted or discretionary use in a Commercial District.

This definition is used to by Administration to interpret what uses require a Commercial Use Development Allotment (CDA) and clearly exempts specific uses (housing, institutions, government) from requiring a CDA.

The approval mechanism for such a conversion would be a Change of Use, with an accompanying legal instrument to be registered on title (see below). Tangible examples of how this scenario might be employed are below.

- Scenario 1. A hotel converts 20 guest rooms totalling 500 sq. m. into staff accommodation. The property owner then transfers the 500 sq. m. to another hotel site to build guest rooms. In this situation it is possible that no physical changes will occur on the donating site, other than those of an internal (or “fit-out”) nature.
- Scenario 2. A commercial property owner converts 1,000 sq. m. of third floor offices to a government service¹ (e.g. courthouse) and then transfers the same floor area to another property. No physical change to the donating property occurs. The subject

¹ **Government Services** means municipal, provincial or federal government services provided directly to the public. This does not include protective and emergency services, utility services, general administrative services, and public education services. Typical uses include taxation offices, courthouses, post office, employment offices, public washrooms, and social services.

third floor offices are sterilized from future conversion back into the commercial fold, however may continue to be used as another government service, or converted into a residential use.

In both of the above scenarios, the first regulatory mechanism to ensure future compliance is the Change of Use permission issued by the Town of Banff (the “D.P.”) Administration is also recommending that a Development Agreement or other instrument be registered on the title of the donating property specifying the area to be transferred and its inability to be converted to future commercial use, or the possibility of a lease amendment from the Crown to ensure the same.

Gross floor Area Exempt Conversion

The second conversion scenario is one where the existing Commercial Gross Floor Area is changed to a use which is exempt from the definition of Gross Floor Area (GFA). Parts of a building which are exempt from GFA do not require a Commercial Use Development Allotment (CDA) under the GFA and FAR definitions (author’s emphasis):

Gross Floor Area means the total floor area of all storeys and basement levels of a building with a clear ceiling height of 1.8 m or more, contained within the outside of the exterior and basement walls or glazing line of windows, but excluding enclosed or unenclosed parking areas, garbage and loading rooms, and floor areas and vertical penetrations devoted exclusively to mechanical or electrical equipment servicing the development.

Floor Area Ratio (or F.A.R.) means the numerical value of the gross floor area on all levels of all buildings and structures on a site, divided by the area of the site except that all or part of a basement may be excluded by a Development Approving Authority where:

- a) the basement is used for storage, service rooms, and other accessory uses and does not include any habitable rooms, commercial accommodation units, retail, or commercial space;*
- b) the basement does not have direct or independent access to the outside of the building; and*
- c) the number and size of windows in the basement is extremely limited.*

The approval mechanism for a GFA exempt conversion would be a Change of Use, with an accompanying legal instrument to be registered on title (see below). Tangible examples of how this scenario might be employed are below.

Scenario 1. A retail building converts a basement retail space to storage. The floor area associated with the former retail space may then be transferred to another site. Physical changes associated with the donating property are limited to the removal of the tenant space. The subject space is sterilized from future conversion back into the commercial fold.

Scenario 2. As part of a redevelopment, a hotel converts a basement restaurant to an enlarged mechanical / electrical facility. The associated floor area then becomes available for transfer.

Again, the same regulatory mechanisms exist to ensure future compliance (Development Permit; Instrument on title; Lease amendment).

Demolition

Demolition is another, extreme route with which a donating property may remove existing Commercial Gross Floor Area from the municipal inventory. Demolition is the clearest method of removing floor area, but also the one which brings with it the need for a thorough review.

Currently, when a building is demolished in Banff the associated Commercial Gross Floor Area is permitted to be reinstated on-site. A real-world example would be the Husky site where the previous service station building will be permitted to be reinstated on-site once a Development Permit has been obtained. However, there is no mechanism to permit this floor area to be moved to another site.

Administration believes that there are opportunities where demolition / transference may be successful. However an errant decision has the potential to significantly affect the character of our commercial landscape and therefore this path should be treated with an abundance of caution. Bylaw 321 attempts to identify areas of potential concern and mitigate their impacts. In order to better understand the particulars of the amending Bylaw, Administration have provided a clause-by-clause summary below:

9.5.3 Gross Floor Area located within a building in a commercial land use district is eligible for transfer under the following conditions:

- a. It was approved by a developing approving authority such as the Town of Banff or Parks Canada and complies with the current definition of Gross Floor Area (GFA);*
- b. It is located within a commercial land use district, subject to the provisions of this section;*
- c. It is not recognized under Federal heritage legislation, such as a National Historic Site, Heritage Railway Station (subject to 9.5.4), or other similar federal legislation;*
- d. It is not listed as a Heritage Property under this section; and,*
- e. It complies with any Council or administrative policy regarding the calculation of existing commercial gross floor area.*

Section 9.5.3 is intended to spell out eligibility for existing Commercial Gross Floor Area to be transferred. It functions in concert with a proposed Council Policy on calculating existing Commercial Floor Area Credits.

Point (a) ensures that only approved floor area is eligible. This ensures that unauthorized development is not eligible for a transfer.

Point (b) clarifies that only floor area within Commercial land use districts are eligible.

Point (c) omits the ability to transfer gross floor area from federally recognized heritage structures within our commercial land use districts (Banff Springs Hotel & CPR Station). This is intended to clarify that altering critical heritage structures (either by demolition or use) is not possible under this Bylaw.

Point (d) omits the ability to transfer existing Commercial Gross Floor Area from ‘A’ ranked heritage buildings which are currently not designated under federal or municipal regulation. Administration believes that this will reduce the pressure to alter important heritage resources which are currently not protected. This “stick” approach is in contrast to other communities who have Transfer of Development Rights (TDR) legislation, where it is common to offer an incentive based approach in tandem with regulation. Administration had initially explored the opportunity to create a “bonussing” system for landowners of these properties, which would reward Municipal designation

with a 2:1 gross floor area bonus. A tangible example of how this would work would be that once a property owner municipally “designates” one of our currently unprotected commercial, A-ranked buildings, they would be able to transfer an equivalent floor area to another property. Unfortunately the limitations of federal growth management legislation inhibit this.

Point (e) ensures that a consistent interpretation of calculating existing commercial GFA is used when determining eligibility.

9.5.4 Further to Section 9.5.3, Gross Floor Area located on Donating Properties within the CS (Commercial Services) land use district may only be transferred to Receiving Properties within the CS land use district.

9.5.5 Further to Section 9.5.3, parcels located within the CR (Railway Lands) land use district are not eligible as Donating Properties, except for those building areas of the CPR Station noted in Schedule C of 11DP49.

Sections 9.5.4 and 9.5.5 are intended to ensure that only “like-for-like” transfers are permitted. These provision omit the ability to transfer floor area from within our industrial districts (CS or Compound, and CR or Railway Lands) to other visitor-oriented land use districts. The one exception would be the 1970s and 1980s additions to the CPR Station which are slated for removal as part of Development Permit 11DP49.

9.5.6 Any donating property where a transfer does not involve demolition must enter into a Development Agreement or similar encumbrance to the satisfaction of the Development Approving Authority which is registered on title and indicates that the donating space may not be used for Commercial use in the future.

Section 9.5.6 speaks to ensuring future compliance / transparency regarding a successful transfer.

9.5.7 Subject to this section, the amount of Gross Floor Area being transferred will not change as a result of the transfer (1:1).

Section 9.5.7 clarifies that there is no increase in GFA as a result of a transfer.

9.5.8 Properties listed as “Heritage Properties” for the purposes of commercial transferability are:

- a. Lot 1, Block 1, Plan 6719BC (101 Banff Avenue – Buffalo Block)*
- b. Lot 11, Block 1, Plan 6719BC (121 Banff Avenue – George Building)*
- c. Lots 1&2, Block 7, 6719BC (202 Banff Avenue – Caribou Corner)*
- d. Lot 4, Block 6, Plan 6719BC (207 Banff Avenue – Grizzly House)*
- e. Those portions of Lot 21~24, Block 5, Plan 6719BC as indicated on Schedule X (218 Lynx Street – Melissa’s Restaurant)*

Section 9.5.8 lists those commercial properties which contain unprotected “A” ranked heritage resources which would not be eligible for a transfer. Note that this list excludes properties already protected via federal heritage legislation or through a Municipal designation. As discussed previously, these would be the same properties eligible for a “bonussing” system which Administration believes is unavailable to the Town due to legislated requirements of commercial growth management.

9.5.9 An Application Notification Sign is required for any application to transfer existing Commercial Gross Floor Area. The notification sign must conform to Section 4.4.0 of the Land Use Bylaw. The application shall be available for public inspection during regular business hours at Town Hall.

9.5.10 An application for the transfer of existing Commercial Gross Floor Area shall be accompanied by Development Permit applications for both the donating and receiving properties.

Sections 9.5.9 and 9.5.10 both speak to the need for applications to be transparent and complete. In particular, Section 9.5.10 speaks to the development approving authority being able to see the “complete picture” of not only what happens to the associated floor area, but also what the outcome of the receiving property will be.

9.5.11 Decisions on the transference of existing Commercial Gross Floor Area shall be made by the Municipal Planning Commission and only in concert with the approvals for the associated Development Permits.

9.5.11 speaks to the need for MPC (as opposed to a Development Officer) to make decisions on this issue. Administration feels that this ensures greater public transparency throughout the process.

Response Options

Council may give first reading to amending Bylaw 321 as presented, defer until additional information is received, propose amendments, or choose not to pass first reading.

IMPLICATIONS OF DECISION

Budget

There are no significant budgetary implications related to first reading at this time. One aspect of this legislation that Council may be interested in is the commodification of floor area through the transfer process. Administration believes (based on examples from other communities) that this is a likely outcome of any transference system. However, Municipal involvement in the commodification of floor area transferability has been avoided in this legislation.

Council may direct Administration to seek legal counsel review of Bylaw 321, with associated costs.

Schedule G (Development Fees) of the Land Use Bylaw would require amending should Council wish to institute a fee for processing CDA transfers.

Communication

The Municipal Government Act (MGA) requirements regarding advertising for public hearings would be followed. This subject matter was also available for public review at the Town’s Open House held on March 14th, 2013. Administration are also liaising with Parks Canada and stakeholder groups in the business community regarding this Bylaw.

Banff Community Plan

Local Economy

- *Commercial development will occur within the legislated commercial growth cap.*
- *Establish commercial land use policies and development regulations to ensure Banff will continue to prosper.*
- *Encourage capital reinvestment in existing commercial space.*

Social

- *Encourage the retention, restoration, rehabilitation and re-use of existing heritage buildings.*

Council Strategic Priorities

The Land Use Bylaw review has been identified as a Council Priority.

ATTACHMENTS

- Amending Bylaw 321

Circulation date: _____

Submitted By: _____
Darren Enns, Senior Planner

Reviewed By: _____
Robert Earl, Town Manager

TOWN OF BANFF

BYLAW 321

Town of Banff Land Use Bylaw Amending Bylaw – Existing Commercial Gross Floor Area Transferability

A BYLAW TO AMEND TOWN OF BANFF LAND USE BYLAW WITH RESPECT TO EXISTING COMMERCIAL GROSS FLOOR AREA TRANSFERABILITY

NOW THEREFORE the Council of the Town of Banff, in the Province of Alberta, duly assembled, ENACTS AS FOLLOWS:

1. This bylaw may be cited as “Land Use Bylaw Amendment - Existing Commercial Gross Floor Area Transferability.”
2. Town of Banff Land Use Bylaw, as amended, is hereby amended by:
 - a) inserting the following as new Section 9.5.0:

9.5.0 Existing Commercial Gross Floor Area (GFA) Transferability

- 9.5.1 Existing Commercial Gross Floor Area may be transferable to another parcel or development under the provisions of this section. “Donating Properties” are those that are the source of transferring Gross Floor Area. “Receiving Properties” are those that will receive and construct Gross Floor Area.
- 9.5.2 The transfer of existing Commercial Gross Floor Area shall conform to Council Policies and Bylaws, and be consistent with the goals and objectives of the Banff Community Plan.
- 9.5.3 Gross Floor Area located within a building in a commercial land use district is eligible for transfer under the following conditions:
 - a. It was previously approved by a developing approving authority such as the Town of Banff or Parks Canada and complies with the current definition of Gross Floor Area (GFA) in the Land Use Bylaw;
 - b. It is located within a commercial land use district, subject to the provisions of this section;
 - c. It is not recognized under Federal heritage legislation, such as a National Historic Site, Heritage Railway Station (subject to 9.5.4), or other similar federal legislation;
 - d. It is not listed as a Heritage Property under this section; and,
 - e. It complies with any Council or administrative policy regarding the calculation of existing commercial gross floor area.

- 9.5.4 Further to Section 9.5.3, Gross Floor Area located on Donating Properties within the CS (Commercial Services) land use district may only be transferred to Receiving Properties within the CS land use district.
- 9.5.5 Further to Section 9.5.3, parcels located within the CR (Railway Lands) land use district are not eligible as Donating Properties, except for those building areas of the CPR Station noted in Schedule C of 11DP49.
- 9.5.6 Any donating property where a transfer does not involve demolition must enter into a Development Agreement or similar encumbrance to the satisfaction of the Development Approving Authority which is registered on title and indicates that the donating space may not be used for Commercial use in the future.
- 9.5.7 Subject to this section, the amount of Gross Floor Area being transferred will not change as a result of the transfer (1:1).
- 9.5.8 Properties listed as “Heritage Properties” for the purposes of commercial transferability are:
- Lot 1, Block 1, Plan 6719BC (101 Banff Avenue – Buffalo Block)
 - Lot 11, Block 1, Plan 6719BC (121 Banff Avenue – George Building)
 - Lots 1&2, Block 7, 6719BC (202 Banff Avenue – Caribou Corner)
 - Lot 4, Block 6, Plan 6719BC (207 Banff Avenue – Grizzly House)
 - Those portions of Lot 21~24, Block 5, Plan 6719BC as indicated on Schedule X (218 Lynx Street – Melissa’s Restaurant)
- 9.5.9 An Application Notification Sign is required for any application to transfer existing Commercial Gross Floor Area. The notification sign must conform to Section 4.4.0 of the Land Use Bylaw. The application shall be available for public inspection during regular business hours at Town Hall.
- 9.5.10 An application for the transfer of existing Commercial Gross Floor Area shall be accompanied by Development Permit applications for both the donating and receiving properties.
- 9.5.11 Decisions on the transference of existing Commercial Gross Floor Area shall be made by the Municipal Planning Commission and only in concert with the approvals for the associated Development Permits.

(b) renumbering subsequent sections and associated references accordingly.

3. 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.
4. This bylaw comes into force after the date of final passing, upon approval and execution by the Superintendent, Banff National Park, for the Minister of the Environment.

5. The Town Manager is authorized to consolidate Town of Banff Land Use Bylaw, as amended.

READ A FIRST TIME this xx day of month, 20xx.

Pursuant to the Municipal Government Act (Alberta), a PUBLIC HEARING was held this xx day of month, 20xx.

READ A SECOND TIME this xx day of month, 20xx.

READ A THIRD TIME this xx day of month, 20xx.

SIGNED AND PASSED this _____ day of _____, 20xx.

Karen Sorensen
Mayor

Robert Earl
Town Manager

APPROVED by the Minister of the Environment, by his delegate this ___ day of _____, 20xx:

Minister of the Environment/Delegate

MINUTES OF THE MUNICIPAL PLANNING COMMISSION
of the Town of Banff in the Province of Alberta
Town Hall Council Chamber
Wednesday, April 10, 2013 at 9:00 a.m.

COMMISSION MEMBERS PRESENT

David Bayne	Public Representative (Chair)
Pat Roi	Public Representative
Bill Squarebriggs	Public Representative (Vice Chair)
Steve Beaton	Public Representative

COMMISSION MEMBERS ABSENT

Grant Canning	Council Representative
Brian Standish	Council Representative
Anne-Marie Puccini	Minister of the Environment Representative
Jay Harris	Public Representative
Vacancy	Administration (non-voting)

ADMINISTRATION PRESENT

Randall McKay	Manager of Planning and Development (Secretary)
Darren Enns	Senior Planner
Chad Townsend	Environmental Services Coordinator
Kerry MacInnis	Administrative Assistant, Planning and Development (Recorder)

1.0 CALL TO ORDER

The Chair of Municipal Planning Commission called the April 10, 2013 regular meeting of Municipal Planning Commission to order at 9:01 a.m.

2.0 APPROVAL OF AGENDA

MPC13-15 Moved by Squarebriggs to approve the April 10, 2013 meeting of the Municipal Planning Commission agenda as amended.

Add: 7.1 (a) Bylaw 320 – Commercial Development Allotment Transferability (update)
7.1 (b) Bylaw 321 – Existing GFA Transferability (update)
7.2 Notice of Motion by Council - Section 4.7.1 Variance Test (update)
7.3 344 Banff Avenue – update on the approved development permit

CARRIED

3.0 ADOPTION OF PREVIOUS COMMISSION MINUTES

MPC13-16 Moved by Squarebriggs to approve the minutes of the March 13, 2013 meeting of the Municipal Planning Commission as presented.

CARRIED

Minutes approved by: _____

4.0 UNFINISHED BUSINESS

There was no unfinished business.

5.0 REPORTS

5.1. Proposed Home Occupation Type 2 (13DP11) at 432B Muskrat Street

Mr. Roland Clark, the applicant was present in the gallery to answer questions from the commission.

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC13-17 Moved by Squarebriggs that the Municipal Planning Commission (MPC) approves development permit application 13DP11 for a proposed Home Occupation Type 2 (tour sales service) subject to the conditions of approval attached as Appendix 'A'.

Appendix 'A'

(1) General Conditions:

- (a) No variation from the residential character and appearance of land or buildings shall be permitted;
- (b) No structural change to any building for the purpose of accommodating a Home Occupation shall be permitted;
- (c) No offensive noise, vibration, smoke, dust, odours, heat, glare, electrical or radio disturbance shall be produced by the Home Occupation;
- (d) At all times the privacy and enjoyment of adjacent dwellings shall be preserved and the Home Occupation shall not adversely affect the amenities of the neighbourhood;
- (e) Not more than 10% of the gross floor area of the principal building shall be used for a Home Occupation;
- (f) The Home Occupation shall not occupy a required parking space;
- (g) The Home Occupation shall not generate more than two clients to the site from which the occupation is being operated at any given time;
- (h) The Home Occupation shall not generate any pedestrian or vehicular traffic or parking in excess of that which is characteristic of the neighbourhood within which it is located;

- (i) No exterior storage or operation of the Home Occupation shall be permitted;
- (j) No signs advertising Home Occupations are permitted;
- (k) Only one other person other than resident of the principal residence shall be engaged in a Home Occupation Type 2;
- (l) Not more than one commercial vehicle with a gross vehicle weight rating of no more than 3500 kg. used in conjunction with the Home Occupation, shall be parked or maintained on the site of a Home Occupation Type 2;
- (m) A Home Occupation Type 2 shall not involve the sale or display of any goods on the site other than those goods constituting the finished principal product of the Home Occupation;
- (n) A Home Occupation shall not be permitted, if in the opinion of the Municipal Planning Commission, it would be more appropriately located in a commercial district;
- (o) The applicant shall obtain a valid Town of Banff Business Licence. Please contact the Business Licence Clerk at Town Hall or by telephone at 403.762.1215; and
- (p) The Development Permit is valid for a period not to exceed the lesser of the term of the Business Licence or a period of one year from the date of issuance.

CARRIED

5.2. Proposed Community Greenhouse (13DP12) at 316 Marten Street

Administration spoke to a written report distributed in the agenda package for this meeting.

MPC13-18

Moved by Beaton that the Municipal Planning Commission (MPC) approve development permit application 13DP12 for the proposed development of a Community Recreation Service addition to the existing commercial and residential building 316 Marten Street, subject to the conditions of approval attached as Appendix A.

Appendix “A” – Recommended Conditions of Approval

- (1) Conditions to be met prior to the issuance of the Development Permit and Building Permit:

Minutes approved by: _____

- (a) Submit detailed servicing and drainage plans for any required on and off-site services, which shall include sewer, water, electrical and gas facilities for review and approval by Town of Banff Engineering.
- (b) Provide a list of the sub-contractors (attached form) to be employed in the construction of your development to Business Licensing, Corporate Services Department.
- (c) Apply for a building permit for construction of the community greenhouse.
- (2) General Conditions:
 - (a) All landscaping and site works related to the development shall be completed within six (6) months of the date of issuance of any required occupancy permit and thereafter permanently maintained in good condition
 - (b) Any changes to the approved plans following issuance of the Development Permit shall be approved by the Development Officer prior to implementation on-site
 - (c) Protect all existing services, including landscaping, on adjacent roadways and properties during demolition and construction. Assume responsibility and repair all damages to any existing services and landscaping on adjacent roadways and properties.
 - (d) Management of all uncontaminated (clean) soil excavated from the site shall be arranged through Parks Canada. Contractors must obtain a Restricted Activity Permit for disposal of clean fill at the Cascade Pit. Permits and further direction may be obtained by contacting Banff Dispatch at 762-1470.
 - (e) Apply for a Street Use Permit from the Manager of Engineering at least 48 hours prior to any work on Town streets, lanes or sidewalks.
 - (f) Develop the following, as may be required, all to Municipal standards:
 - (i) Construction of new sanitary sewer, storm sewer and water connections including the removal, relocation or cutting off of any redundant connection(s);
 - (ii) Construction and repair of concrete sidewalks, curb and gutter and new driveway crossings including the closing of any redundant crossing; and
 - (iii) Construction and repair of street and lane surfacing.
 - (iv) All exposed metal flashing, mechanical equipment and flues shall be coordinated to match the building colour.
 - (g) All signs require separate Development Permit approval

- (h) It is the responsibility of the project proponent to ensure that all mitigation measures identified in the environment assessment, Phase 1 ESA, and guidelines identified in the Parks Canada’s Environment Guidelines for Development Projects in Banff National Park (Directive 17) are implemented during demolition and construction. The project proponent shall ensure that any hazardous materials discovered prior to or during demolition or excavation are immediately reported to Parks Canada and properly disposed of according to current regulations.

CARRIED

6.0 CORRESPONDENCE

There was no correspondence presented.

7.0 NEW BUSINESS

7.1 (a) Land Use Bylaw 320 – Commercial Development Allotment Transferability
Administration provided a verbal update on this.

MPC13-19 Moved by Squarebriggs that the Municipal Planning Commission support Land Use Bylaw 320 as presented with the addition that all CDA Transfers be approved by MPC with consideration of the goals and objectives of the Banff Community Plan and the Land Use Bylaw.

CARRIED

7.1 (b) Land Use Bylaw 321 – Existing GFA Transferability
Administration provided a verbal update on this.

MPC13-20 Moved by Bayne that the Municipal Planning Commission support Land Use Bylaw 321 as presented with consideration of the goals and objectives of the Banff Community Plan and the Land Use Bylaw.

CARRIED

7.2 Notice of Motion – Section 4.7.1 Variance Test
Administration provided a verbal update on this.

7.3 344 Banff Avenue – request for information regarding this approved development
Administration answered questions from the commission regarding this approved development.

In light of the recent decision regarding 13DP06 on 344 Banff Avenue, Squarebriggs gave a notice of motion that at the next meeting of MPC on May 8, 2013, discussions take place regarding existing apartment housing parking ratios and amenity spaces.

8.0 INQUIRIES

There were no inquiries.

9.0 DATE OF NEXT MEETINGS/ADJOURNMENT

The next regularly scheduled meeting of the Municipal Planning Commission is scheduled for Wednesday, May 8, 2013 at 9:00 a.m.

MPC13-21 Moved by Squarebriggs to adjourn the meeting at 10:44 a.m.

CARRIED

David Bayne
Chair

Kerry MacInnis
Recording Secretary