

MINUTES OF APPEAL HEARING FOR SLINKY MINE DEVELOPMENT PERMIT of the Appeal Board of the City of Dawson called for 7:00 p.m. on Thursday, October 14, 2010 in the Town of the City of Dawson Council Chambers.

PRESENT:

Chair	Peter Jenkins
Member	Rick Riemer
Member	Wayne Potoroka
Member	Bill Kendrick
Member	Stephen Johnson

ALSO PRESENT:

Appeal Board Secretary	Jeff Renaud
Recording Secretary	Chelsea Parent

CALL TO ORDER: Appeal Board Chair called the meeting to order at 7:02 PM.

Chair Jenkins requested the CAO to provide an overview on how the Appeal Hearing will transpire. CAO explained that an Appeal Hearing is conducted somewhat differently than a regular Council meeting. It is quasi-judicial in nature, which means it is run with certain strictness to it. CAO proceeded to explain that each appellant will have five (5) minutes to disclose their statements to the Appeal Board. Upon conclusion of the five (5) minutes, the Appeal Board will have the opportunity to ask questions of clarification pertaining to an Appellant's statements. The Board will not be rendering a decision this evening as there are several written submissions to take into consideration. A written decision will be produced within ten (10) business days upon adjournment of this Appeal Hearing.

CAO introduced the topic under Appeal that being the issuance of Mr. Darrel Carey's Slinky Mine Development Permit.

APPELLANTS

Jim Taggart noted that this matter is not about mining or whether or not the Board supports mining; it is about Council and the communities' right to control and regulate activities within the municipal boundaries. Mr. Taggart mentioned that the Municipal Act clearly outlines Council's duty to its community. Mr. Taggart noted he believes that approving a development permit for a heavy industrial activity in a residential area is a dereliction of duty in this case. Mr. Taggart noted that Mining Inspection reports and Water Board reports indicate minimal mining is being done on the permitted area. Mr. Taggart noted that the encroachment on Mary McLeod Road and the movement onto private property is a clear intensification of use. On that basis, Mr. Taggart noted that there is clear case law which states a sufficient intensification of an existing use can be classed as a new use. Mr. Taggart stated that he urges Council to investigate this legal avenue a little bit further, and noted that pursuing this legal avenue will legally resolve this issue. Mr. Taggart noted that he hopes the Appeal Board withdraws the conditional permit and reconsider some of the legal avenues presented.

The Appeal Board inquired about the alleged movement onto private property.

Mr. Taggart noted he understood that the approved mining claims did infringe on home owners' residential lots.

The Appeal Board requested clarification that mining did occur directly on residential lots.

Mr. Taggart stated that property owners' lots have been encroached upon. Mr. Taggart explained that current regulation states that any mining activity within 300 meters of a residential

lot has to be approved by that property owner. Mr. Taggart noted that EMR, Yukon Lands, the proponent and the resident should discuss compensation for encroachment onto private properties. Mr. Taggart stated this is not what is being done.

Appeal Board inquired whether Mr. Taggart has approached EMR about lowering the 300 meter limit and changing it to 100 meters.

Mr. Taggart explained that he has spoken to EMR in Whitehorse and they told him that 300 meters is standard procedure. Mr. Taggart added that such information changes depending on whom he speaks with at the EMR branches.

Glenda Bolt thanked the Appeal Board for holding this Hearing. Ms. Bolt stated that this conflicting land use is not going to solve anything by issuing this permit. Ms. Bolt noted that issuing this permit will open up the doors for future applications with similar activities within the municipality and close proximity to residents. Ms. Bolt stated that such an industrial request was discussed the previous night during a regular scheduled Council meeting. Ms. Bolt stated that issuing this permit will increase the problems at a rapid pace. Ms. Bolt stated that she believes the City has rights and responsibilities regarding this issue and she believes the City can withhold a permit on grounds of the intensification use. Ms. Bolt added the expansion has removed community infrastructure, including Mary McLeod Road, the Dome and recreation trails. Ms. Bolt urged the Appeal Board not to give in and to further pursue more legal counsel to create more avenues to understand this intensification of use. Ms. Bolt stated that she believes intensification is happening and it will continue. Ms. Bolt stated that the City has a duty of care to its residents and the environment in this municipality. Ms. Bolt noted the Yukon Government should not have supported the City of Dawson with building a subdivision without rectifying this issue of conflicting land use. Ms. Bolt noted there are mistakes with the conditions on the Slinky Mine Development Permit. Ms. Bolt stated that she appreciates the work the City staff has done, and the research staff and Council have done towards this issue. Ms. Bolt urges the Appeal Board to look at additional avenues and look for new allies.

Appeal Board inquired about hearing comments on the possibility of moving Mary McLeod Road.

Ms. Bolt agreed she has heard various comments about moving the road, but stated that she has never mentioned it herself. Ms. Bolt asked for clarification on the question.

Appeal Board inquired what Ms. Bolt's thoughts were on relocating the road to address safety concerns.

Ms. Bolt stated she is not qualified to comment on moving the road.

Maureen Abbott noted she is increasingly distressed of what seems the rights of the miners are more important than the rights of all citizens. Ms. Abbott noted that it is very frustrating for residents to continuously be told that the City cannot do anything other than issue a permit with conditions. Ms. Abbott noted she does not fully understand the reasons for this stance and hopes that the Appeal Board can shed some light on why they cannot do anything. Ms. Abbott queried whether the City does not want to fight for the changing or out-dated Territorial laws, or whether it would cost too much. Ms. Abbott also queried why the rights of one non-resident miner be upheld over the rights of one citizen of the town he is going to disrupt.

Ms. Abbott noted that what might be legal may not be moral or right or just. Ms. Abbott urged the Appeal Board to think about what is moral or right or just.

Appeal Board inquired about what the appetite is for the City of Dawson taxpayers to incur large legal expenses.

Ms. Abbott stated that she believes there is probably not a large interest in incurring a large bill.

Appeal Board stated that in some ways the Board is not looking at this permit as a permit to allow, but as a permit to impose terms and conditions on. The Appeal Board queried how Ms. Abbott weighs the rights of all individuals.

Ms. Abbott noted that the rights of one non-resident miner seem to be more important than the rights of all who don't want the miner in the community.

Appeal Board inquired of Ms. Abbott whether it is her belief that encumbering rights should not be upheld.

Ms. Abbott noted that Mr. Carey has a grandfathered encumbering right. Ms. Abbott noted that it is time the City stands up to those ancient laws and have them changed. Ms. Abbott stated that mining is a bully, and the City and its residents have to give in to it.

Appeal Board called for any additional appellants.

Appeal Board noted that several written submissions have been provided and will be given consideration. The Appeal Board knows its obligation to its residents and wishes to clarify that this is not an easy decision. The Appeal Board wished to clarify that calling the rights of miners grandfathered is not an accurate description of Mr. Carey's rights. The Appeal Board would like to thank those for providing written submissions and to those who dedicated their time for attending this Appeal Hearing.

ADJOURNMENT

The Appeal Hearing for Slinky Mine Development Permit is adjourned at 7:32PM.

Originals signed by
Peter Jenkins
MAYOR

Originals signed by
Jeff Renaud
CAO