



# **Subdivision and Development Appeal Board**

## **Procedures and Guidelines**

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## 1. Definitions

- 1.1. Board - means the Subdivision and Development Appeal Board established by Subdivision and Development Appeal Board Bylaw 18307.
- 1.2. Chair - means the person who has been appointed by City Council as Chair under Subdivision and Development Appeal Board Bylaw 18307.
- 1.3. Clerk - means the person appointed as Clerk of the Subdivision and Development Appeal Board under *Municipal Government Act* section 627.1.
- 1.4. Development Authority - means those persons provided by bylaw who exercise development powers and perform duties on behalf of the municipality (*Municipal Government Act* section 623(b)).
- 1.5. *Municipal Government Act (MGA)* - means *Municipal Government Act*, RSA 2000, c M-26.
- 1.6. Subdivision Authority - means those persons provided by bylaw who exercise subdivision powers and duties on behalf of the municipality (*Municipal Government Act* section 623(b)).

## **2. Hearing Procedures Review and Amendment**

- 2.1. The Clerk will review the Hearing Procedures annually.
- 2.2. The Chair will approve or amend the Hearing Procedures as recommended by the Clerk

### 3. Notification

3.1. Where the Clerk is required to send a notification, the Clerk will notify the following person(s):

a. **Subdivision Appeals** - Section 679(1) of the *Municipal Government Act*:

- i. the applicant for subdivision approval,
- ii. the subdivision authority that made the decision,
- iii. if land that is the subject of the application is adjacent to the boundaries of another municipality, that municipality,
- iv. any school board to whom the application was referred,
- v. every Government department that was given a copy of the application pursuant to the subdivision and development regulations, and
- vi. the owners of adjacent land.

b. **Development / Stop Order Appeals** - Section 686(3) of the *Municipal Government Act*:

- i. to the appellant,
- ii. to the development authority whose order, decision or development permit is the subject of the appeal, and
- iii. to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.

## 4. Scheduling

- 4.1. The Clerk will schedule a hearing date that falls within 30 days of the day that the appeal was properly filed.
- 4.2. The Clerk will develop and implement procedures for the scheduling of hearings that achieve a balance between the following objectives:
  - a. Ensuring that all legal requirements are met, including principles of natural justice;
  - b. Ensuring that hearings are scheduled as soon as reasonably possible;
  - c. The format of the hearing; and
  - d. Making the most efficient use of resources including hearing rooms, Members, and Board Administration.
- 4.3. When scheduling hearings the Clerk will, where possible, schedule appeals into the same day when they are similar with regard to:
  - a. The location of the property;
  - b. The representative of the City; and
  - c. The Appellant or agency representing the Appellant, if any.
- 4.4. Although availability of parties will not typically be requested in advance of scheduling, the Clerk, on a situational basis, may request input from parties or their Agents on the most efficient scheduling and may take that input into account when scheduling hearings, along with the availability of Board Members.
- 4.5. Board Members will be scheduled in panels of three members unless the Chair, with input from the Clerk, determines that a particular appeal warrants a five member panel.
- 4.6. Names of Board Members scheduled on a panel will not be publicly released in advance of a hearing.

## **5. Written Submission Deadlines - Development Appeals**

- 5.1. To ensure fairness to all person(s), written materials including any evidence, photos, presentations, etc. must be submitted based upon the following disclosure dates:
  - a. Eight business days prior to the scheduled hearing date, the Development Authority is required to provide their written submissions to the Board.
  - b. Six business days prior to the scheduled hearing date, the Appellant is required to upload or email written submissions to the Board.
  - c. Six business days prior to the scheduled hearing date, any affected party can upload or email their comments or written submissions to the Board.
  - d. Four business days prior to the scheduled hearing date, the Respondent (if applicable), is required to upload or email their written submissions to the Board.
  - e. Two business days prior to the scheduled hearing, the Appellant is required to provide a response in writing to any submissions provided by other person(s). This response is to be uploaded or emailed to the Board.
- 5.2. Late submissions may not be accepted.
- 5.3. New information received on the date of the hearing by any party may or may not be accepted at the sole discretion of the Board. The Board may consider several factors in determining whether to accept new information including:
  - a. The nature and complexity of the information being presented;
  - b. The probative value of the information being tendered;
  - c. The necessity to provide additional time to parties to respond to the information;
  - d. Any other aspects the Board deems relevant in their sole discretion.
- 5.4. The Board may still proceed with the hearing even in the absence of written submissions or attendance during the hearing.

- 5.5. Written submission deadlines may be modified at the discretion of the Chair or the Clerk for any appeal filed with the Board.
- 5.6. Any written submissions or other evidence provided to the Board is considered a public record and is available for public viewing upon request.
- 5.7. The Subdivision and Development Appeal Board does not have the authority to compel a party to submit specific evidence.

## **6. Written Submission Deadlines - Subdivision Appeals**

- 6.1. To ensure fairness to all person(s), written materials including any evidence, photos, presentations, etc. must be submitted based upon the following disclosure dates:
  - a. Eight business days prior to the scheduled hearing date, the Subdivision Authority is required to provide their written submissions to the Board.
  - b. Six business days prior to the scheduled hearing date, the Appellant is required to upload or email written submissions to the Board.
  - c. Four business days prior to the scheduled hearing date, any adjacent landowner can upload or email their comments or written submissions to the Board.
  - d. Two business days prior to the scheduled hearing, the Appellant is required to provide a response in writing to any submissions provided by other person(s). This response is to be uploaded or emailed to the Board.
- 6.2. Late submissions may not be accepted.
- 6.3. New information received on the date of the hearing by any party may or may not be accepted at the sole discretion of the Board. The Board may consider several factors in determining whether to accept new information including:
  - a. The nature and complexity of the information being presented;
  - b. The probative value of the information being tendered;
  - c. The necessity to provide additional time to parties to respond to the information;
  - d. Any other aspects the Board deems relevant in their sole discretion.
- 6.4. The Board may still proceed with the hearing even in the absence of written submissions or attendance during the hearing.
- 6.5. Written submission deadlines may be modified at the discretion of the Chair or the Clerk for any appeal filed with the Board.

- 6.6. Any written submissions or other evidence provided to the Board is considered a public record and is available for public viewing upon request.
- 6.7. The Subdivision and Development Appeal Board does not have the authority to compel a party to submit specific evidence.

## **7. Postponement or Scheduling Requests and Decisions**

- 7.1. When filing an appeal of a permit refusal or a conditional approval, the Appellant may request, in writing, a postponement of the hearing to a later date and waiving their right to be heard within 30 days. The Board may grant a later hearing date after reviewing the written submissions or the Appellant may be required to speak to the postponement request on the originally scheduled hearing date. The postponement request will be decided by the Board according to the principles of procedural fairness and natural justice.
- 7.2. After an appeal of a permit approval is filed, person(s) may request, in writing, a postponement of the hearing to a later date.
  - a. The Clerk may solicit from all or some of parties a written opinion with respect to the postponement request.
  - b. The Board may grant a later hearing date on the basis of the written consent of all parties.
  - c. If there is opposition to the written request, the Board may grant a later hearing date after reviewing written submissions or the person(s) may be required to speak to the postponement request on the originally scheduled hearing date.
  - d. The postponement request will be decided by the Board according to the principles of procedural fairness and natural justice.
  - e. Reviewing postponement requests prior to the hearing is subject to the complexity of the matter being appealed, the number of parties involved and Board availability. The Clerk or the Chair may determine the postponement request will be processed as a preliminary matter at the appeal hearing.
- 7.3. Requests for postponements at the outset of a hearing or in the midst of a hearing will be decided by the Board according to the principles of procedural fairness and natural justice.
- 7.4. A written request for a postponement should state the reason(s) for the request.
- 7.5. A written response to a postponement request should state whether or not the party consents and, if the party does not consent, the reason(s) for not consenting.

- 7.6. Postponement procedures may be modified at the discretion of the Chair or the Clerk for any appeal filed with the Board.

## 8. Withdrawals or Cancellations

- 8.1. An Appellant may withdraw their appeal at any time.
- 8.2. If an appeal is withdrawn before the hearing, there will be no hearing of the matter and no opportunity for other interested or affected parties to make submissions before the Board.
- 8.3. If an appeal is withdrawn at the hearing or prior to a decision being issued, the SDAB appeal file will be closed and no decision will be issued.
- 8.4. The Applicant of the Development Permit may request cancellation of their development permit pursuant section 7.190(6.1.6) of the *Edmonton Zoning Bylaw*.
- 8.5. If a Development Permit is cancelled, the SDAB hearing will also be cancelled as there is no Development Permit to be appealed.
- 8.6. Once an appeal hearing is cancelled due to a withdrawal or Development Permit cancellation, appeals cannot be reinstated and all appeal rights are extinguished.
- 8.7. The Clerk will refund Appellant filing fees if the appeal is withdrawn before Notices are sent out.
- 8.8. The Clerk will refund Appellant filing fees to the person who paid them.

## 9. Hearings

- 9.1. Subdivision and Development Appeal Board hearings are open to the public.
- 9.2. Subdivision and Development Appeal Board hearings can be held by a variety of formats or a combination of formats, such as written submission, in person, video conference, or other electronic means of communication.
- 9.3. The Chair or the Clerk will determine the format of hearing based upon resource availability.
- 9.4. Person(s) will be advised in the Notice of Hearing, of the format of the hearing and about how they can participate in the hearing.
- 9.5. If the Notice of Hearing indicates that the matter is scheduled to proceed with a combination of formats, person(s) may choose how they wish to join the hearing, recognizing that other person(s) to an appeal may join via an alternative format.
  - a. Person(s) may not claim procedural unfairness, if other person(s) join the hearing in an alternative format.
  - b. Requests for postponement by reason of 9.5(a), may not be granted by the Board.
- 9.6. If the Notice of Hearing indicates that the matter is scheduled to proceed in person, the Board Members will attend in person. If a circumstance prevents a Board Member from attending the hearing in person, an alternative Board Member will be scheduled to attend the hearing in person.
- 9.7. If the Notice of Hearing indicates that the matter is scheduled to proceed with a combination of formats, the Board Members will attend in person. However if a circumstance prevents a Board Member from attending the hearing in person, they may join the hearing through an electronic format as long as the majority of the Board members attend in person.
- 9.8. If the Notice of Hearing indicates that the matter is scheduled to proceed through electronic means, the Board Members will attend via video conference.

- 9.9. Person(s) should arrive in-person or join the video conference hearing at least 20 minutes prior to the start of the hearing.
- a. The Board will determine if person(s) that attend the hearing late (after the hearing start time) have an opportunity to present orally to the Board.
- 9.10. If an Appellant or a Respondent has not joined the hearing within 15 minutes of the scheduled start of a hearing, the Board may proceed with the hearing based upon written submissions provided or postpone to a future hearing date.
- 9.11. The Chair or Presiding Officer will introduce the members of the Board and will identify their names and the method by which the members are participating in the hearing.
- a. Member biographies are available on the Edmonton Tribunals website at:
- <https://edmontontribunals.ca/subdivision-and-development-appeal-board/about-board>.
- 9.12. Any members of the public wishing to observe or attend a hearing, may contact the Subdivision and Development Appeal Board office for further instruction.
- 9.13. The Clerk will undertake its best efforts to ensure that Subdivision and Development Appeal Board hearings are livestreamed on YouTube. Hearings can be viewed on YouTube live; however, once a hearing concludes the livestream will be made private. The Clerk or the Chair may modify this procedure on a situational basis.

## **10. Continuation of a Hearing**

- 10.1. If, after a hearing has closed, the Board is of the opinion that further submissions are required, the Board may continue that hearing by requesting further submissions from the person(s).
- 10.2. A hearing can be continued only if the Board has not yet issued a written decision.
- 10.3. When a hearing is continued, the Clerk will inform the parties or the person(s) of the reason for the continuation with any directions from the Board.
- 10.4. If a hearing is continued and, upon direction from the Board, a notice may be re-issued to all person(s) that were notified of the original hearing date.

## **11. Management of Improper Conduct**

- 11.1. Improper conduct during a hearing includes:
  - a. Inappropriate behaviour in the course of the hearing or in communication with the Board or the other person(s);
  - b. Persistent refusal to comply with the Board's instructions or rulings; or
  - c. Repeated actions that adversely affect the fairness and efficiency of the hearing process.
- 11.2. Inappropriate behaviour includes, but is not limited to, the following:
  - a. Engaging in abusive, disorderly, delaying or threatening behaviour which directly or indirectly disrupts or obstructs the progress of the hearing;
  - b. Engaging in any disruptive conduct, gesture, or verbal exchange which a reasonable person would believe shows contempt or disrespect for the hearing, the other party or the panel, or which a reasonable person would perceive as intimidating;
  - c. Disregarding the authority of a member of a hearing panel or Board administration, for example, refusing to comply with directions; or
  - d. Making or causing to be made an electronic recording, photograph, screenshot or court reporter transcription of any hearing, unless the Board authorizes these activities.
- 11.3. To remedy prohibited conduct, the Chair may take such steps as it deems reasonable, including, but not limited to, the following:
  - a. Verbally warn the offending person that their actions are not acceptable and must stop;
  - b. Take a recess to reduce any tension or emotion;
  - c. Expelling the person from the hearing;
  - d. Set time limits for making submissions at each stage of the hearing; or
  - e. Direct that the hearing proceeds with written submissions only (no oral hearing).

## **12. Appeal Hearings with Multiple Appellants or Special Circumstances**

12.1. Appeal hearings with multiple Appellants or appeals with special circumstances may follow the same procedures outlined in this document unless, at the discretion of the Chair or the Clerk, it is necessary to implement some or all of the procedures outlined in this section.

### **12.2. Scheduling**

12.2.1. If it becomes evident that a proposed development may garner multiple appeals or has special circumstances that would require alternative hearing arrangements, the Clerk, at the direction of the Chair, may delay scheduling the hearing until the appeal deadline has ended.

12.2.2. Although availability of parties will not typically be requested in advance of scheduling, the Clerk, on a situational basis, may request input from parties or their Agents on the most efficient scheduling and the Board may take that input into account when scheduling hearings, along with the availability of Board Members and hearing rooms.

12.2.3. If the availability of parties under 12.2.2 and the appeal deadline under 12.2.1 result in the hearing not being held within 30 days of the first Notice of Appeal being received, the Board will pass a motion opening the appeal hearing, tabling the appeal, and setting an appeal hearing date, based on the information provided by the parties at that point and in accordance with the principles of fundamental justice. The Clerk will then issue a scheduling letter indicating when the hearing will be heard.

### **12.3. Hearing Attendance**

12.3.1. The Clerk, at their discretion, may request that person(s) who plan to attend a hearing, pre-register.

12.3.2. The Clerk or the Board, at their discretion, may request that person(s) in attendance who are observing and not providing submissions to the Board, leave the hearing room and be

relocated to a location where they can observe the hearing via video.

#### 12.4. Postponement Requests

- 12.4.1. After an appeal of a permit approval is filed, a person may request, in writing, a postponement of the hearing to a later date.
- 12.4.2. Taking into consideration the number of person(s) involved in a particular appeal, or if a person objects to the postponement, or if an earlier hearing date cannot be accommodated, the Clerk or the Chair may require the person(s) to speak to the postponement request on the originally scheduled hearing date.
- 12.4.3. Taking into consideration the input of all person(s) to an appeal, the postponement request will be decided by the Board according to the principles of procedural fairness and natural justice.
- 12.4.4. If the postponement request is not granted on the originally scheduled hearing date, the hearing will proceed on that date, notwithstanding person(s) indicating they are not ready to proceed.
- 12.4.5. If a postponement request is granted, the Clerk or the Board may request input from person(s) on a future hearing date and may take that input into account when scheduling the hearing, along with the availability of board members and hearing rooms.
- 12.4.6. Postponement procedures may be modified at the discretion of the Chair or the Clerk for any appeal filed with the Board.

#### 12.5. Time Limits

- 12.5.1. The Board may establish time limits for person(s) presenting to the Board.

- 12.5.2. Time limits will take into consideration the number of person(s) involved in the appeal and the length of time the Board determines is adequate for person(s) to present their submissions. This could include the length of time other person(s) have used to present their submissions.

### **13. Re-hearings (Court of Appeal decisions)**

- 13.1. Unless otherwise directed by a court, when a decision of a Board is returned to the Board to rehear, the Clerk will schedule the re-hearing as a hearing *de novo*, with new disclosure dates and notification periods.
- 13.2. The Clerk will endeavor to schedule the rehearing before Members who have not heard the matter before unless the court directs otherwise. However, based on the availability of Members, there is no guarantee that Members will not include individuals who heard the original matter.

## 14. Decisions

- 14.1. The Board shall give its written decision and reasons, within 15 days after concluding the hearing, to the Applicant, the Appellant, the City and those affected person(s) who gave their name and address to the Board's Administration.
- 14.2. In addition to issuing written decisions to the person(s) to a hearing, and in the interests of transparency and public access, the Clerk will publish Subdivision and Development Appeal Board decisions electronically through the Canadian Legal Information Institute ([CanLII.org](http://CanLII.org)).
- 14.3. Subdivision and Development Appeal Board decisions that are not available online may be accessed by request to the Clerk.

## 15. Access to Records

- 15.1. The Clerk will permit access to Board records in accordance with this procedure and *Municipal Government Act* Section 686(4).
- 15.2. Records may be accessed by contacting Board Administration and making a request.
- 15.3. Individual external recordings of hearings are prohibited.
- 15.4. Hearing recordings (if available) may be accessed by contacting Board Administration and making a request.
  - a. Board Administration will determine if the hearing recording is available and, if so, will provide a copy of the recording in audio format only.
  - b. Audio recordings (if available) will only be released once the decision of the Subdivision and Development Appeal Board has been issued.
- 15.5. Electronic access is the default manner in which access to records and hearing recordings will be provided. If any other method of access is requested, the Clerk may assess reasonable fees to the person making the request, taking into consideration:
  - a. The resources required to process the request; and
  - b. The type and size of the records requested.