



POLICIES AND PROCEDURES

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PURPOSE:

The purpose of this document is to summarize information on the role and responsibilities of the Development Appeals Board and the policies and procedures of the Board for conducting Hearings, formal meetings and writing Decisions.

A. STRUCTURE

1. COMPOSITION AND MEMBERSHIP

The Development Appeals Board (DAB or the Board) is an autonomous body appointed by resolution of City Council, pursuant to Section 214 of *The Planning and Development Act, 2007* (the Act) and is established by the *The Regina Zoning Bylaw No. 2019-19*.

The Board consists of five members who are appointed by City Council for terms of up to three years.

Pursuant to Section 215 of the Act:

- no person who is a Council member, member or employee of a municipal planning commission or an employee of the municipality is eligible to be appointed as a member of the Board or to continue as a member of the Board.

2. JURISDICTION

Subject to the provisions of Section 219 of the Act, any decision of the Development Control Officer may be appealed to the DAB. The Board adjudicates appeals as provided for under the provisions of Sections 222 to 226 of the Act.

In addition, the Board also adjudicates appeals resulting from:

- actions initiated within the provisions of Section 58(1) of *The Planning and Development Act, 2007*. The applicant may, within 30 days of the date of Council's approval, appeal the development standards prescribed with the approval of a discretionary use or discretionary form of development to the DAB and from that Board, if necessary, to the Saskatchewan Municipal Board Planning Advisory Committee (SMBPAC) in accordance with Section 226.

3. REMUNERATION

The rates of remuneration for members of the DAB, effective January 1, 2001, as set out in Bylaw 10255 are as follows:

- (a) the Chairperson shall receive \$60.00 for each appeal Hearing, Decision meeting, and formal Board meeting attended;
- (b) each Member (other than the Chairperson or Acting Chairperson) shall receive \$30.00 for each appeal Hearing, Decision meeting, and formal Board meeting attended; and
- (c) each Member shall receive \$15.00 for each property viewed relative to their duties as a Board member.

4. CHAIRPERSON

The Chairperson for the Board is elected by the other members of the Board, on an annual basis.

In addition to the duties and responsibilities of members, the Chairperson:

- works with the Secretary to arrange meetings of the Board;
- chairs Board meetings, appeal Hearings, and Decision meetings, in accordance with the Hearing and meeting procedures adopted by the Board;
- facilitates a fair decision-making process at Decision meetings, which allows for the input and vote of each member present;
- reviews and signs all Decisions; and
- is responsible for determining, on behalf of the Board and in consultation with the Secretary, the need for legal advice or opinions

5. VICE-CHAIRPERSON

The Vice-Chairperson is elected by the other members of the Board on an annual basis.

In addition to the duties and responsibilities of a member, the Vice-Chairperson acts in the capacity of Chairperson in the Chairperson's absence or at the request of the Chairperson.

6. MEMBERS

The duties and responsibilities of the members are to:

- attend Hearings, meetings, and Decision meetings of the Board;
- become familiar with Hearing and meeting procedures;
- provide the Secretary with timely notice of any absences;

- review and follow Board Policies and Procedures;
- thoroughly review all appeal information before the Hearing;
- view the property under appeal prior to the scheduled Hearing, where deemed appropriate, to note its physical and geographic conditions;
- inform the Secretary of any potential conflict of interest in advance of the Hearing or meeting;
- declare a conflict of interest, when necessary, and state the reason for the conflict;
- contribute at Hearings by taking accurate notes, asking relevant questions, participating in discussion/deliberation;
- be patient and respectful of an Appellant's limited knowledge of legislation, inexperience with the appeal and Hearing process and how an Appellant provides evidence;
- respect the role of the Chairperson and other members of the Board;
- act in the capacity of Chairperson in the absence of the Chairperson and Vice-Chairperson or at the request of the Chairperson;
- write a Decision, when assigned, including the analysis, summary, and conclusion, based on analysis of the information provided prior to the Hearing and evidence considered at the Hearing, and provide the draft Decision for review and consideration by Board members at the Decision meeting; and
- take part in the decision-making process by thoroughly reviewing the draft Decision in a timely manner, contributing to the deliberation and debate for each Decision and by voting on each finalized Decision.

7. SECRETARY

City Council appoints the Secretary pursuant to Section 216(3) of the Act. The City Clerk or designate shall act as Secretary to the Board.

The duties and responsibilities of the Secretary are to:

- facilitate the orientation/training of Board members on legislative requirements, Hearing protocol, and Decision writing;
- receive appeal applications and collect the \$300.00 fee in accordance with Section 220 of the Act for appeals under Section 219 of the Act;
- schedule appeal Hearings in accordance with the Hearing schedule adopted by the Board and within the legislative time frames;

- prepare and circulate the Notice of Appeal in accordance with Section 222 of *The Planning and Development Act, 2007*, not later than 10 days before the date fixed for appeal Hearing by ordinary mail or electronically to:
 - the Appellant;
 - the owner, where the owner and the Appellant are not the same person
 - the Council;
 - the relevant branch of City Administration (“the Respondent”); and
 - each assessed owner of adjacent property or property within a radius of 75 metres from the property in respect of which the appeal is made, whichever distance is greater.
- provide the Appellant, the Respondent (Planning & Development Services), and any other interested parties with general appeal and Hearing information and protocol on the appeal and the process in general;
- prepare and circulate appeal dockets and agendas for Board Hearings and meetings;
- greeting Appellants and interested parties as they arrive at the Hearing and provide a copy of the information sheet or alternatively, for electronic meetings, provide a copy of the Hearing information sheet prior to the Hearing, together with information for appearing at the Hearing via teleconference;
- receive documents submitted by the Appellant, Respondent, or other parties, after the Hearing docket is circulated, and provide them to the Board and all other parties for review; and enter as evidence on instruction from the Chairperson;
- taking notes, as required, during Hearings and meetings;
- communicate with Appellants and Respondents, as required, on any interim orders or proceedings associated with hearings;
- arrange for Decisions to be prepared in final format and signed by the Chairperson;
- sign Decisions, if required;
- distribute written Decisions to the Appellant, interested parties and Respondent via registered mail or electronically, including notification of the right of appeal on a question of law or jurisdiction within 10 days of the date the Decision is made, with instructions regarding appeals to the SMBPAC;
- ensure that the file for each appeal is complete and in good order;

- transmit appealed records to the SMBPAC;
- provide copies of the notice of Hearing and Decisions related to SMBPAC appeals to the Board and Planning and Development Services;
- monitor staffing and budgeting related to Board operations; and
- make changes to the Board Policy and Procedure document, as required, to update items that become out of date as a result of decisions of either the DAB or City Council or by changes made to *The Planning and Development Act, 2007*.

8. LEGAL COUNSEL

The Board may retain the services of legal counsel that may be necessary to assist in the discharge of its duties. Legal counsel shall be the same legal counsel retained by the Regina Appeal Board and Board of Revision.

9. MEETINGS

Meetings of the Board will be scheduled by the Secretary, in consultation with the Chairperson, or by resolution of the Board.

The Secretary shall provide, whenever possible, written notice of the date, time and place of the meeting to all members at least 24 hours prior to the meeting, as well as the business to be transacted at the meeting.

The Secretary shall attend all meetings of the Board to record any decisions of the Board.

Procedures used at formal meetings shall be in accordance with the provisions of City Council's Procedure Bylaw No. 9004. These provisions include decisions being made by motion, which is debated and considered carried by majority vote of those members present. All members, including the Chairperson, must vote on each decision; however, a seconder is not required.

In addition to an annual general meeting, the Board may hold meetings at any time for orientation, training or other purposes, to be called by the Secretary, in consultation with the Chairperson.

B. HEARINGS

Hearings of the DAB are open to the public and the media may attend. The purpose of a Hearing is to consider the evidence and facts of appeals in a forum that allows all parties a fair hearing. The Hearing does not include the decision-making process, which is conducted at a separate private session meeting.

The Board will consider the appeal based on the information submitted and the evidence and arguments of all parties at the Hearing. Hearings will be conducted according to the rules of natural justice and procedural fairness.

1. NATURAL JUSTICE AND PROCEDURAL FAIRNESS

Natural justice means that the law requires all parties be given a fair Hearing. A fair Hearing takes place where:

- the parties to the Hearing have had proper notice of the Hearing;
- all parties know the case made against them and are given a fair chance to present their case;
- all parties present arguments and evidence to fully support their case; and
- the Board members who hear the case, decide the case free from bias.

2. HEARING DOCKET

Hearing dockets will be prepared for each appeal and the maximum number of appeals per Hearing docket will be limited to four. In the event it is necessary for an additional appeal or appeals to be heard within a specified period of time, the Secretary, in consultation with the Chairperson, will determine whether a Hearing docket will include more than four appeals or whether an additional Hearing will be scheduled to accommodate the additional appeal or appeals.

A Hearing docket will consist of the following information and will include but is not limited to:

- the appeal application, together with any supporting maps, plans, photos or evidence/submissions received from the Appellant;
- the notice of appeal and list of addresses used to circulate the notice to all neighbouring property owners, together with the accompanying affidavit;
- the report from the Respondent, Planning & Development Services, which provides preliminary information on the appeal, together with any other evidence and/or supporting material; and
- any submissions from neighbouring property owners.

Copies of the Hearing docket will be delivered to each Board member, the Appellant, and Planning & Development Services by the Friday of the week prior to the scheduled Hearings. Copies of the information within the docket is made available to all interested parties, upon request.

3. LOCATION

Hearings and formal meetings will be held at City Hall, 2476 Victoria Avenue, in Darlene Hincks Committee Room, Main Floor or other locations or by teleconference, if required from time to time.

4. WITHDRAWAL OF APPEALS

A written request to withdraw an appeal can be submitted to the Secretary at any time prior to the Hearing.

Written requests to withdraw an appeal, received before the Notice of Appeal has been circulated to neighbouring property owners, are confirmed by the Secretary and cancelled by the Clerk's Office. The \$300.00 appeal fee is waived or refunded.

If the Notice of Appeal has been circulated to the neighbouring property owners with a 75-metre radius, the \$300.00 application fee will not be refunded.

If a written request to withdraw an appeal has been received after the appeal docket has been circulated, the Secretary will confirm the withdrawal with the Appellant and notify the Board, any interested parties, and Respondent of the withdrawal prior to the Hearing. At the beginning of the Hearing, the Chairperson will make note of the withdrawal of the appeal.

5. QUORUM

A majority of the Board members constitutes a quorum for the purpose of a Hearing, Decision meeting or formal meeting (three out of five members). If a quorum is not present within fifteen minutes of the scheduled time for the Hearing, the Hearing shall be deemed to be cancelled, due to lack of quorum.

For Decision meetings, a majority of the Board members who were in attendance for the Hearing of the appeals being decided will constitute a quorum (four members at a Hearing – quorum to render a decision is three; three members at a Hearing – quorum to render a decision is two).

6. HEARING CONDUCT

The Chairperson controls the procedures and rules to be followed at the Hearings and will set the ground rules and maintain order. There should be one speaker at a time and all questions and comments at the Hearing must be made with the permission of the Chairperson.

Board members should not be seen talking with any of the parties inside or outside the Hearing location. Any discussion between Board members, before or after the Hearing, should take place only in a confidential location outside the Hearing location.

Board members must be fair and not be rude, overly aggressive, indiscreet or closed-minded. Criticisms or comments on the issue of fairness should not be taken personally as a member may have created an unintentional impression. Body language and tone of voice can convey a wrong message to a party. Lack of eye contact, raised eyebrows, as well as angry, sympathetic, or a doubtful, impatient tone of voice can be perceived differently than the member intended. All actions and expressions can contribute to the appearance of fairness.

7. APPELLANT NOT PRESENT

If the Appellant is not present at the Hearing when the appeal is called, the appeal will be moved to the end of the list and considered at that time. If the Appellant is still not present, the Board may table the appeal to an alternate Hearing date or hear the appeal in the Appellant's absence.

If the Appellant notifies the Secretary that they are unable to attend the scheduled Hearing, the Board will consider a request to table the appeal to an alternate Hearing unless it believes the request is unreasonable or seen as an effort to stall the process.

If the Appellant is not present at the alternate Hearing date, the Board may table the appeal to another Hearing date or hear the appeal in the Appellant's absence.

8. CONFLICTS OF INTEREST

Each Board member is responsible to immediately notify the Chairperson and Secretary upon becoming aware that they are or may be in a conflict of interest in connection with an appeal. The Act states that no member of the Board may hear or vote on any decision that relates to a matter with respect to which the member has a conflict of interest or financial interest as described in Sections 114 and 115 of *The Cities Act*. Section 117(1) outlines the declaration requirements

Where the possibility of a conflict exists, a member must not sit during the portion of the Hearing for that appeal. The member should excuse themselves from the remainder of the Hearing and take no part in deliberations of the Board.

If the Chairperson has a conflict of interest with respect to an appeal, the same rules apply and the Vice-Chairperson will assume the duties of the Chairperson, for that portion of the Hearing and the signing of the Decision for that appeal.

The Board member shall leave the room following the declaration unless the member has the right to be heard, at which case he/she must leave his or her place at the Board table and join the public gallery.

Script - Declaring a Conflict of Interest at the Meeting:

In accordance with The Cities Act, I am disclosing that I have a conflict of interest for Appeal # because (state the general nature and any details that could reasonably be perceived to affect your impartiality.)

If a member is absent from the Hearing when the appeal was considered, then the conflict must be declared at the next meeting.

Script - Absent from Previous Meeting:

I was not present at the Hearing for Appeal # on (date); however, in accordance with The Cities Act, if I had been at the Hearing, I would have declared a conflict of interest because (state the general nature and any details that could be perceived to affect your impartiality).

9. ORDER OF PROCEEDINGS

The Chairperson will:

- read the opening statement to commence the session;
- introduce the members, Secretary, and members of City Administration;
- introduce the first appeal, call the Appellant forward to state their name for the record of the Board;
- have the Secretary confirm the appeal is properly before the Board, based on the information submitted within the appeal docket;
- ask the Appellant to proceed with their case by explaining the nature of their appeal and providing any submissions or evidence;
- allow for questions of the Appellant by the Board;
- call for any interested parties in attendance to come forward and provide the Board with their position on the appeal;
- ask the Respondent to provide information regarding the appeal;
- allow for questions of the Respondent by the Board;
- allow for further questions by the Appellant, through the Chairperson, where clarification is required;
- ask the Appellant for any closing remarks;
- ask if Board members have any final questions; and

- close the Hearing and indicate that a written Decision will be rendered and forwarded by registered mail or electronically within four (4) weeks and move on to the next appeal.

SAMPLE OPENING COMMENTS OF CHAIRPERSON

“Good afternoon. Welcome to the Development Appeals Board hearing for << date >>. My name is << _____ >> and I will be chairing your appeal hearing today.

The members of the Board in attendance today are: << _____ >>

The Board Secretary is << _____ >>; and

The representative(s) of the City Administration, Planning & Development Services is/are << _____ >>

You should have all received an information sheet which:

- *Quotes the legislation that guides the decision-making process AND*
- *Outlines the Hearing process which will be followed today.*
- *Explains that the Board is autonomous in its decision-making process*
- *Indicates that the Decision on this/these appeal(s) will be finalized and Decision(s) will be sent by REGISTERED MAIL in about 4 weeks.*

Please remember that the Board’s priority is to ensure that all parties receive fair hearings, and our decision will be based upon the evidence presented.

Board members may have viewed your property to note its physical and geographic conditions.

Today, we will be hearing _____ appeal(s).”

The Secretary will provide a full hearing script as guidance for the Chairperson.

Procedure for Preliminary Matters:

After the introduction of each appeal, the Chairperson should confirm that the appeal is properly before the Board based on the relevant information within the appeal docket, which will be confirmed by the Secretary, and that all parties have received the following information:

Exhibit “A” The application, which was submitted to the Office of the City Clerk on (date), after the Appellant was refused a development permit on (date).

Or where an Order to Comply has been issued:

Exhibit “A” The application, which was submitted to the Office of the City Clerk on (date), after an Order to Comply was issued on (date of issue), with a compliance deadline of (deadline date).

Or where a Minor Variance Approval has been revoked:

Exhibit “A” The application, which was submitted to the Office of the City Clerk on (date), after the Appellant was notified of a minor variance approval revocation on (date).

Exhibit “L” The affidavit, the list of addresses used to circulate the notice of appeal to all neighbouring property owners within a 75 m radius of the subject property and the notice of appeal sent by regular mail on (date).

Exhibit “R” The report submitted by the Respondent, which includes the facts and information pertinent to the appeal and their response to the applicable sections of *The Planning and Development Act, 2007*.

Exhibit “P” Letter from (name), neighbouring property owner of (address), dated (date).

Any additional evidence submitted during the hearing will be entered as evidence by the Secretary, on the instruction of the Chairperson.

NOTE: Exhibits in the information packages are labelled as follows:

- “A” Will be used for Appellant’s information and will be marked A1, A2, etc.
- “L” Will be used for the information provided by the Secretary, according to Legislative requirements and will be marked L1, L2, etc.
- “R” Will be used for the Respondent’s information and will be marked R1, R2, etc.
- “P” Will be used for third party information, namely, letters from neighbouring property owners, and will be marked P1, P2, etc.

10. DECISIONS

The Board will render its decision in writing, together with reasons for the decision, within 30 days of the conclusion of the Hearing.

All members will be included in the rotation for preparing draft Decisions. Accurate, legible notes taken by all members during the Hearing, as well as preliminary discussion with the Board immediately after the Hearing, may be used in drafting the Decision.

Members will prepare draft Decisions, as assigned, for further review, discussion and determination by the Board during the private Decision meeting to be determined by members after the Hearing. In accordance with Section 225(3) of the Act, a decision of the majority of the members of the Board present and constituting a quorum is considered a decision of the Board. In the case of a tie vote, the vote is deemed to be a negative vote.

Members who were not in attendance for the Hearing for a specific appeal will not take part in the Decision session for that appeal.

For an appeal to be granted by the Board, the Board considers whether granting the appeal would be a special privilege, be contrary to the purpose and intent of the bylaw and would injuriously affect neighbouring property owners.

The Secretary will provide administrative/secretarial support to assist the Board with the decision-writing process, which includes arranging for the finalizing/formatting of each Decision, which shall be signed by the Chairperson or in their absence, any other member and the Secretary.

The Secretary will provide a copy of each Decision to the Appellant, Ministry of Government Relations – Director of Community Planning, Saskatchewan Municipal Board Planning Appeals Committee and all persons who made representation at the Hearing by registered mail or electronically, within 10 days of the date on which the Decision was made. Copies of each Decision are also provided to members of the Board and Respondent electronically for their information.

Subject to an appeal to the SMBPAC, the Board's decision takes effect after the expiration of 30 days from the date on which the decision is made. (Section 226 of the Act.)

The Decision format shall include the following headings:

- Appellant
- Respondent
- Property
- Nature of Appeal
- Requested Variance

- Heard On
- In Attendance
- Legislative Provisions
- Preliminary Matters
- Evidence Presented
- Relevant Facts
- Analysis/Conclusion
- Decision
- Right of Appeal

Decisions will include references to adjournments, attachments, exhibits, Board orders and conflicts of interest related to the appeal.

11. APPEAL JURISDICTION GUIDELINE

This guideline is for handling appeals where jurisdiction of the board is unclear.

The DAB is established by City Council pursuant to Part XI, Appeals, Division 1 of *The Planning and Development Act, 2007 (The Act)*. City Council has delegated authority to the DAB to establish procedures for Hearings pursuant to subsection 215(5) of *The Act*.

Section 219 of *The Act* outlines the right of appeal on The Zoning Bylaw. An individual has the right to appeal to the Development Appeals Board in accordance with subsection 219(1) of *The Planning and Development Act, 2007*, where the Development Officer:

- is alleged to have misapplied the Zoning Bylaw in issuing a development permit;
- refuses to issue a development permit because it would contravene the Zoning Bylaw; or
- issues an Order to Comply pursuant to subsection 242(5) of the Act.

An individual also has the right to appeal to the Board in accordance with Section 58, 60(9), 60(10), 228(1) and 228(3) of *The Act*, where:

- a Discretionary Use was issued with prescribed development standards or conditions and the applicant is of the opinion that the development standards and conditions exceed those necessary to secure the objectives of the Zoning Bylaw;
- a Minor Variance was revoked based on an objection by a property owner having a common boundary;
- a Minor Variance was refused;
- a Minor Variance was approved with terms and conditions;
- a Subdivision has been refused or revoked; or
- a Subdivision has been approved with specific development standards for a development on hazardous lands.

An individual does not have the right to appeal if a development permit was refused on the basis that the use:

- is not a permitted use;
- is a discretionary use that has not been approved by resolution of Council;
or
- is a prohibited use.

The Board will consider all circumstances, including the foregoing, in considering its jurisdiction.

Permitted Use

A permitted use is defined under *The Act* as a use of land or a building or form of development that is prescribed in the Zoning Bylaw as a use that is allowed on a parcel. Questions to ask to determine if the development is permitted on the land include:

- 1) Is the development identified within the Zoning Bylaw as a permitted land use?
- 2) Is the type of development allowed within the Zoning District?
- 3) Does the development require a development permit be issued?

When a development is not identified as permitted and/or allowed in the Zoning District, then move onto Discretionary use.

Discretionary Use

A discretionary use is defined under *The Act* as a use of land or a building or form of development that:

- is prescribed as a discretionary use in the Zoning Bylaw; and
- requires the approval of Council pursuant to Section 56.

Questions to consider when determining if a discretionary use exists include:

- 1) Is the type of development a discretionary use under the Zoning Bylaw?
For example, if a restaurant development, is that a discretionary use in the Residential Zone?
- 2) If the discretionary use is not permitted in the Zone, has Council considered or approved this type of discretionary use?
- 3) If Council has not decided, is the City Administration seeking a Council resolution to allow the development as a discretionary use within the Zone?

Council maintains jurisdiction over discretionary uses. Once resolved by Council, applicants may go through the development application processes. If Council chooses not to approve the discretionary use, the applicant may wish to pursue the development in a Zone approved for it and/or pursue the matter further in Court.

The last area where there is no right of appeal is on a prohibited use.

Prohibited Use

Prohibited uses are defined under *The Act* as a use of land or a building or form of development that is prescribed in the Zoning Bylaw as not allowed on a parcel.

A development that is a prohibited use is not allowed in the Zoning Districts at all. These types of developments are clearly outlined in the Zoning Bylaw. For example, a commercial business would be a prohibited use in a residential zoning district. Additionally, some home-based businesses would be prohibited uses in a residential zoning district.

Board Procedure

As the City Clerk and City Administration roles are designed to support both Council and the City's interests, they are not involved in determining whether an appeal should go forward or not. They are neutral parties and therefore the Board is responsible for determining if appeals are properly before the Board.

Where uncertainty on jurisdiction exists, the Board Chair, in consultation with Board Members, will have the Board Secretary advise the Appellant and Respondents (City Administration) that the first part of the Hearing will be to hear evidence from either party as to why the Board has jurisdiction to hear the appeal. They are invited to provide evidence, in writing or verbally at the Hearing. This will ensure both parties have time to prepare prior to the Hearing and are not caught off guard.

After hearing the evidence, the Board may continue with the appeal Hearing and/or may adjourn for a short time, for example 15-30 minutes to consider the evidence. The Board will advise the parties at the Hearing if only a short period is required to discuss the matter or may adjourn the appeal to a new Hearing date.