

SUBDIVISION AND DEVELOPMENT APPEAL BOARD TRAINING

2016





INTRODUCTION



HISTORY



SUBDIVISION AND DEVELOPMENT APPEAL BOARDS

BACKGROUND

Since September 1, 1995, SDABs have been tasked with the function of making decisions on appeal. Their function falls into three areas:

1. Hearing a decision of a development authority on a development application (MGA s. 685(1)(a)(b))
2. Hearing a decision of a subdivision authority on an application where the original parcel of land is:
 - ▶ Located in the white area, as classified by the Public Lands Act
 - ▶ More than 800m from the center line of a highway with a posted speed limit of 80km or greater
 - ▶ Does not contain, nor is adjacent to a water body
 - ▶ More than 300m or 450m from a waste management facility
 - ▶ More than 300m from a wastewater treatment plant(MGA s. 678(2) and s.22 of the Subdivision and Development Regulation)
3. Hearing the issuance of a stop order pursuant to section 645 of the MGA (MGA s.685(1)(c))



SDAB BYLAW

A municipality **must** adopt a bylaw establishing an SDAB or to enter into an agreement to establish an intermunicipal SDAB (MGA s.627)

Bylaw sets out:

- How members are appointed
- The length of terms
- Remuneration of board members
- Who serves as secretary and their duties



MEMBERSHIP

Members are appointed by Council, but Councilors may not form the majority of the Board or of the panel hearing the appeal. In the case where it is a joint Board made up of multiple municipalities, it is permissible to have all councilors provided they are not from the same municipality.

Who cannot be a member:

- A municipal employee
- A member of a Municipal Planning Commission
- A person who carries out subdivision or development powers for the municipality

MEMBERSHIP

What makes a good member:

- Demonstration of integrity
- Being perceived as fair and impartial
- Have regard for the interests of property owners, developers, general public and the municipality
- Involvement in community and/or knowledge of development related professions
- Knowledge of subdivision and development processes and legislation
- Ability to devote the time when asked to sit on a board





SDAB POWERS

MGA sets out the powers of the SDAB and the board must work within the framework of provincial legislation, municipal statutory plans and bylaws.

The MGA also places limits where the SDAB must:

- ▶ Stay within the legislation
- ▶ Act fairly and reasonably within the limits of administrative law and natural justice
- ▶ Act in accordance with its enabling bylaw
- ▶ Apply the applicable planning framework



WHAT IS NATURAL JUSTICE?

- ▶ What are the principles of natural justice? The simplest description is “fair play in action”
 - ▶ People have a right to be heard: they must have a fair opportunity to present their case whenever their interests might be adversely affected by a decision (fair notice);
 - ▶ The ruling must be made by someone free of bias (impartiality);
 - ▶ The judgment must be based on evidence, not on speculation or suspicion, and the decision must be communicated in a way that makes clear what evidence was used in making the decision (gather facts and hear all).

IS THERE SUCH A THING AS PRECEDENT?

Whereas an SDAB is not bound to follow previous decisions, fairness within natural justice does indicate that similar situations be treated similarly...

To deviate from this practice should lead a board to defining in its reasons for decision why and where the two cases diverge to create different outcomes.





IN MAKING A DECISION FOR SUBDIVISION

- ▶ May confirm or revoke or vary the approval or decision or any condition imposed by the authority or make substitute an approval, decision or condition of its own
- ▶ May in addition to the other powers it has, exercise the same power as a subdivision authority
- ▶ Must act in accordance with ALSA regional plan
- ▶ Must have regard for statutory plans
- ▶ Must conform with the uses of land referred to in a LUB
- ▶ Must have regard to but is not bound by the Subdivision and Development Regulation

IN MAKING A DECISION FOR DEVELOPMENT

- ▶ May confirm or revoke or vary the order, decision or development permit or any condition attached to any of them or make substitute an order, decision or approval of its own
- ▶ May make an order or decision or issue or confirm the issuance of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion, the proposed development conforms with the prescribed use for that land or building in the land use bylaw and would not:
 - ▶ Unduly interfere with the amenities of the neighborhood, or
 - ▶ Materially interfere with or affect the use, enjoyment or value of neighboring parcels of land
- ▶ Must act in accordance with ALSA regional plan
- ▶ Must have regard to, but is not bound by, Subdivision and Development Regulation
- ▶ Should comply with the land use policies, statutory plans and uses of land prescribed in the land use bylaw.

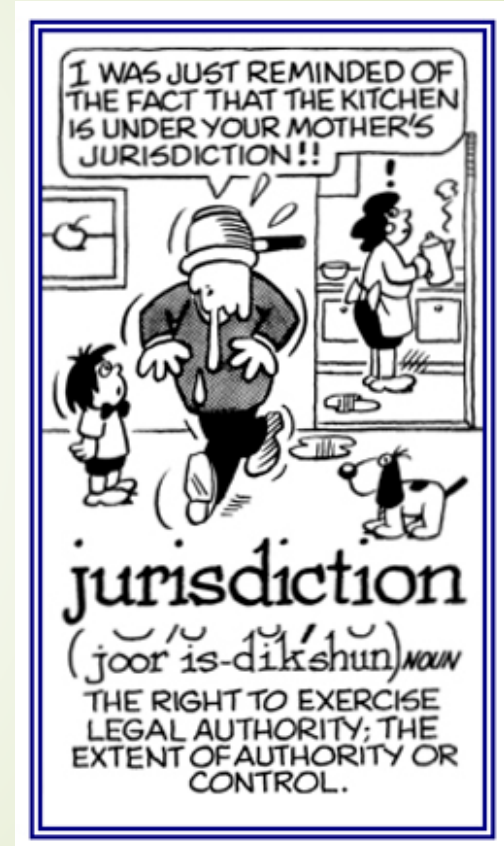
WHAT IS JURISDICTION?

A SDAB must act within its jurisdiction when it makes a decision. Without jurisdiction the SDAB does not have authority to make a decision. The SDAB hears development, subdivision and stop order appeals but...

Where provincial interests may be affected, the MGB hears subdivision appeals.

The SDAB has no jurisdiction to set policy of the municipality.

The SDAB has no jurisdiction where federal legislation has authority. (eg. telecommunication tower, airports, railways)




ESTABLISHING JURISDICTION

Generally and at the beginning of a hearing, each SDAB should establish jurisdiction.

Validity or Jurisdiction considerations include:

- ▶ The application for appeal was received late
- ▶ The appeal was not complete or the fee was not paid
- ▶ The development or subdivision is for an exempted use under MGA s.618 or the Planning Exemption Regulation
- ▶ There is a question whether the matter should be heard by the MGB
- ▶ There is question if the appellant has standing before the SDAB
- ▶ The appeal is for a development permit issued for a permitted use
- ▶ A party is requesting an adjournment of the hearing

QUESTION

- 
1. When and how should jurisdiction and the validity of the appeal be dealt with by the SDAB?



LEGISLATIVE AND PLANNING CONSIDERATIONS



LEGISLATIVE AUTHORITY FOR PLANNING

Generally, at the outset of any appeal the SDAB members have to answer these questions:

“Can You make the decision?” to fulfill the legislative requirements (goes to jurisdiction)

“Should You make the decision?” to answer the planning considerations of a proposal (goes to the planning merits)

“Why are you making the decision?” to ensure the decision has reasons which are supported by local and provincial planning documents

“Who is your audience in making the decision?”



CAN YOU?

- ▶ Constitutional Act of Canada via the Charter of Rights and Freedoms does not specifically recognize a right to property and concedes power to the provinces on matters related to governing land use planning. And the provinces through legislation delegate certain powers to the municipalities.
- ▶ In Alberta this is done through Part 17 of the Municipal Government Act and its purpose is defined under s.617.



CAN YOU?

SDAB must only make decisions on matters which are properly before the Board:

- ▶ s. 203(2)(e) Delegation by Council
 - ▶ s.545, 546 Orders to Remedy
- ▶ s. 618 Non-application of Part 17
- ▶ s. 619 NRCB, ERCB, AEUB or AUC authorizations
- ▶ s. 620 Conditions Prevail
- ▶ Subdivision and Development Regulation Part 4 s.22



SHOULD YOU?

When evaluating the appeal, the SDAB will consider questions such as:

- ▶ How does this proposal contribute to the orderly, economic, and beneficial development, use of land or pattern of settlement?
- ▶ Is the land suitable for the purpose intended as a result of the proposed subdivision?
- ▶ Does the proposal maintain or improve the quality of the physical environment?
- ▶ How does the proposal impact the individual rights and the public interest? Which is more important in this case and why?
- ▶ Is the proposed subdivision or development compatible with existing subdivision and development? With the future planned subdivisions and development?

WHY ARE YOU?

Alberta Land Stewardship Act

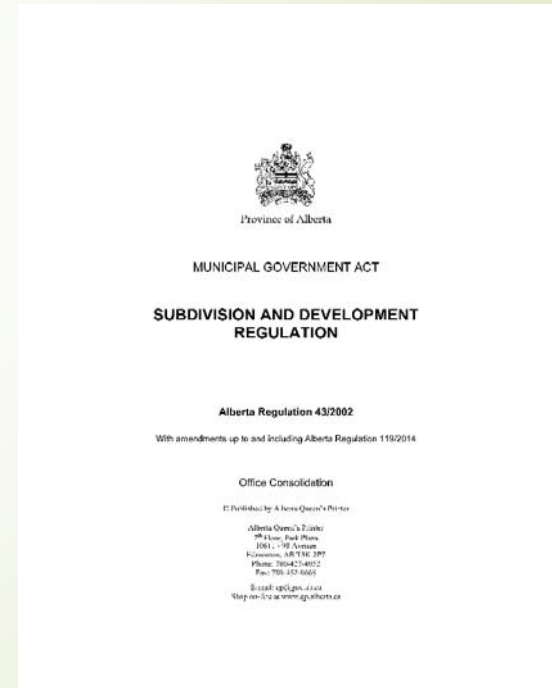
- ▶ Pursuant to section 680(2)(a) for subdivision appeals and 687(3)(a) for development appeals, the SDAB must act in accordance with the South Saskatchewan Regional Plan (SSRP).



WHY ARE YOU?

Subdivision and Development Regulation

- ▶ Pursuant to section 680(2)(d) for subdivision appeals and 687(3)(b) for development appeals, the SDAB must have regard to but is not bound by the Regulation.





WHY ARE YOU?

Statutory Plans

- ▶ Pursuant to section 680(2)(a.1) for subdivision appeals, the SDAB must have regard to any statutory plan.
- ▶ Pursuant to 687(3)(a.1) for development appeals, the SDAB must comply with any statutory plan.



WHY ARE YOU?

Land Use Bylaw (LUB)

The land use bylaw is an implementation document and has precedent over Statutory Plans where the two may be perceived to be in conflict.

SDAB should be looking for an intent statement which generally describes the parameters of a land use district.

SDAB should then be clear on the differences between a permitted and discretionary uses.

Some nuances exist within LUBs, temporary uses, exempted uses(no permit required), direct control, and similar to provisions.

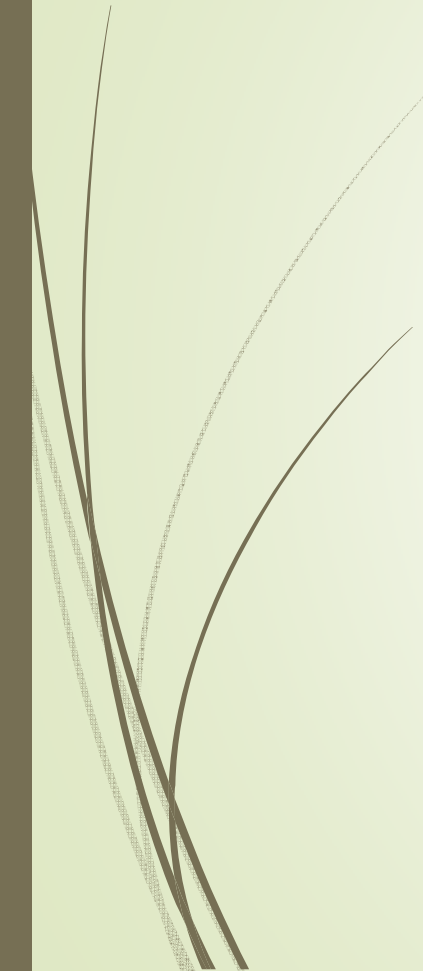
Other nuances surround the pith and substance of use and are distinguished from development standards.



WHY ARE YOU?

Non-conforming uses and buildings

S. 643 of the MGA





WHY ARE YOU?

Policies, procedures and standards

Often the municipality will adopt specialized documents to address more detailed planning and/or development processes. The SDAB when made aware of these policies should proceed being mindful of them, but is not bound by them unless they are contained in a statutory plan or LUB.




OTHER PLANNING CONSIDERATIONS

SDAB must consider broad planning principles in their duties. Some of these are:

- The proposal's compatibility with existing development and the landscape;
- Future considerations for the lands and those surrounding them, both short and long term;
- Values in planning, which include separating incompatible uses, promoting a variety of uses, and providing for different forms of transportation;
- Cumulative impacts of different proposals, servicing ramifications;
- Assessments of the severity of the impacts and where possible mitigating negative impacts of proposals;
- Understanding physical, social, economic, and environmental impacts;
- Be cognizant of interpretation of the courts and the resulting case law...

QUESTIONS



2. What is the relationship between statutory plans and a land use bylaw?
Which prevails in a conflict?

3. What is the difference between a **use** and a **standard** (or regulation) in a land use bylaw?



OVERVIEW OF THE SUBDIVISION AND DEVELOPMENT PROCESS



THE MANDATE OF A DEVELOPMENT AUTHORITY

Development Authority

=

Development Officer, MPC, or any other person or organization
SDAB

Role: processes development permit applications under the planning provisions of the MGA. (s. 624 of the MGA)



THE MANDATE OF A SUBDIVISION AUTHORITY

Subdivision Authority

=

Council or a committee of Council, a Designated Officer, MPC, or any other person or organization.

SDAB or MGB

Role: processes applications and issues subdivision approvals under the MGA.
(s. 623 of the MGA)

PROCESS

APPLICATION

- Applicant makes an Application
- Can be time consuming and complex
- Applicant's responsibility to provide enough information
- Appropriate information required may be laid out in the land use bylaw or application package

ACCEPTANC

- Determination if application is complete
- Requirements of bylaw met?
- Requirements of Section 4 of the Subdivision and Development Regulations Met?
- Notification

ANALYSIS

- Application assessed based on legislative and planning considerations
- Permitted / Discretionary

DECISION

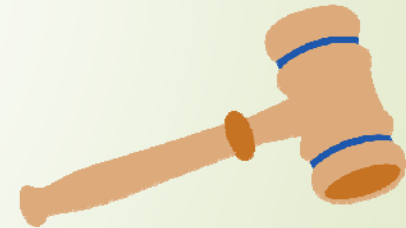
- Approved with or without conditions
- Refused



APPEALS TO THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

QUASI-JUDICIAL TRIBUNAL

- ▶ Part of class of decision makers called “administrative tribunals”
- ▶ Quasi-judicial function means:
 - ▶ to make a decision based on evidence of findings of fact and apply legal rules to those findings to come to a decision.
- ▶ Take into consideration
 - ▶ Legislation
 - ▶ Administrative Law
 - ▶ Principles of Natural Justice (Common Law)



HEARING DE NOVO



- DE NOVO – legal term that means “Anew”
 - Every appeal hearing should be heard as if the information being presented is brand new.
 - Without considering the decision that was previously made by the approving authority.
 - SDAB hears the application as if they are making the original decision.
 - Despite making a new decision, the SDAB can hear evidence/presentations from the development authority.
 - Make own decision based on information presented at the hearing.
 - Can approve/refuse decision.
 - Can add/remove/change conditions.

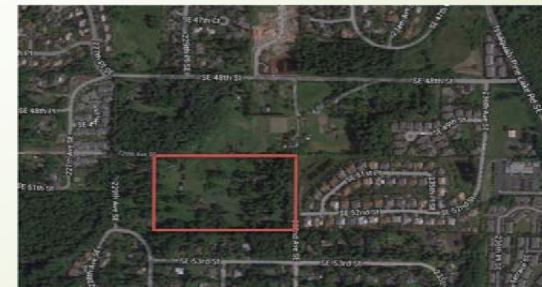


WHAT CAN BE APPEALED?

Subdivision Applications

An appeal can be launched if:

- ▶ A decision was not made within 60 days or an agree-to extended date was confirmed through a time extension agreement.
- ▶ A decision on a subdivision under section 652(4) of the MGA was not made within 21 days.
- ▶ A written decision was made, with or without conditions, by the subdivision authority.
- ▶ A subdivision application was refused.



WHAT CAN BE APPEALED?

Development Permit Applications

An appeal can be launched if:

- ▶ A permit was not issued within the 40 days or as agreed to in a time extension agreement
- ▶ If a permit is issued, with or without conditions
- ▶ If a permit was refused

** A permitted use can only be appealed if the land use bylaw was relaxed, varied or misinterpreted by the development authority.

WHAT CAN BE APPEALED?

Stop Orders

An appeal can be launched if:

- ▶ A person was improperly issued a Stop Order.
 - ▶ SDAB can only make a decision on whether or not the Stop Order was issued correctly.
 - ▶ Must closely examine development permit, and it's conditions, with the Land Use Bylaw, to determine whether or not there was a breach of the bylaw or the MGA.
- ▶ If no development permit was issued, SDAB must consider if a development permit was required.
- ▶ If Stop Order was issued correctly, SDAB may only vary the time permitted for the applicant to comply.



HOW MUST AN APPEAL BE FILED AND WHAT MUST IT CONTAIN?

- ▶ ORRSC municipalities typically provide a form for the appellant to fill out. The form requires the appellant to provide:
 - ▶ The address of the appellant.
 - ▶ Reasons for the appeal
 - ▶ Should include issues in the decision or the conditions imposed.
 - ▶ Legal description of land involved.
- ▶ Most municipalities also accept a written letter with reasons to the municipality in lieu of filling out the form as the notice of appeal.





WHO CAN APPEAL?

Important to know who can appeal in each situation.

Subdivision Applications

- The applicant
- Any government department to which the application was required to be circulated as per the Subdivision and Development Regulations
 - *Does not include agencies that the municipality voluntarily sends notice to as part of Section 5 (5)(n) in the Subdivision and Development Regulations.*
- Council of the municipality if it is not the subdivision authority
- A school authority regarding allocation of municipal, school or community service reserve, the land or money in place of reserve.



WHO CAN APPEAL?

Important to know who can appeal in each situation.

Development Permit Applications

- The person applying for the permit
- Any person who is affected by the development permit

*** The SDAB may sometimes have to decide who qualifies as an "affected person"*

)



WHO CAN APPEAL?

Important to know who can appeal in each situation.

Stop Orders

- The registered owner of the property
- The person responsible for contravention of the bylaw or MGA
- The person in possession of the land or building (e.g. a lease)

WHEN MUST AN APPEAL BE FILED?



Each situation for when an appeal can be filed also varies

Subdivision	Development	Stop Order
14 Days after receipt of decision	14 days after receipt of the decision	14 days after receipt of the decision
19 Days after consideration of Mailing	21 days dependent upon notification type	21 days dependent upon notification type
	Deemed received 7 days after mailing date if sent by regular mail <i>(Interpretation Act)</i>	Deemed received 7 days after mailing date if sent by regular mail <i>(Interpretation Act)</i>
		** If SDAB determined Stop Order was issued correctly, may have to alter compliance timeline to incorporate time of appeal

HAS ADEQUATE NOTICE BEEN PROVIDED?



For every appeal, proper notice is required to ensure all parties have reasonable time to prepare.

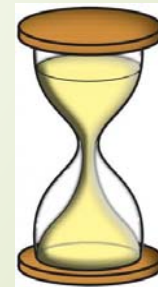
Subdivision	Development	Stop Order
5 days for mailing	5 days for mailing	5 days for mailing
Must notify the following:	Must notify the following:	Must notify the following:
<ul style="list-style-type: none"> • The Applicant 	<ul style="list-style-type: none"> • The Appellant 	<ul style="list-style-type: none"> • The Appellant
<ul style="list-style-type: none"> • Subdivision Authority 	<ul style="list-style-type: none"> • The Original Applicant (if not also the appellant) 	<ul style="list-style-type: none"> • The Original Applicant (if not also the appellant)
<ul style="list-style-type: none"> • Adjacent Municipality (if subject parcel is adjacent to one) 	<ul style="list-style-type: none"> • Development Authority 	<ul style="list-style-type: none"> • Development Authority
<ul style="list-style-type: none"> • Applicable School Boards 	<ul style="list-style-type: none"> • Any landowners required to be notified according to Land Use Bylaw 	<ul style="list-style-type: none"> • Any landowners required to be notified according to Land Use Bylaw
<ul style="list-style-type: none"> • Applicable Government Agencies 	<ul style="list-style-type: none"> • Any others that were notified of original decision by the Development Authority 	<ul style="list-style-type: none"> • Any others that were notified of original decision by the Development Authority
<ul style="list-style-type: none"> • Adjacent landowners to the subject parcel 		
<ul style="list-style-type: none"> • Any others notified of original decision by the Subdivision Authority 		

TIME LIMIT TO HOLD A HEARING?

Once any type of appeal has been filed, SDAB has 30 days, from the time the appeal was received, to hear the appeal.

- ▶ Person filing the appeal is expected to make a verbal presentation to the SDAB.
 - ▶ *Written and visual presentation's also acceptable.*

**Late payment and/or not having a proper letter of appeal with reasons can extend when the appeal is deemed received.





COMMON LAW SUBSTANTIVE LIMITATIONS



IRRELEVANT CONSIDERATIONS

- ▶ SDAB can only take into account **relevant** considerations (i.e. planning and land use)
- ▶ The Courts have stuck down what they consider **irrelevant** considerations
 - ▶ Business Competition (claim it will impact business or sales)
 - ▶ User vs. the Use – the character or personal situation of the user (decisions tied to land not people)
 - ▶ Public benefit – decision cannot be withheld due to opinion the land would better serve a public use



OTHER COMMON LAW LIMITATIONS

- ▶ Fettering Discretion
 - ▶ SDAB cannot operate with an inflexible policy,
 - ▶ Each case must be considered on its own merits

- ▶ Unauthorized Sub-delegation
 - ▶ Cannot delegate to another party or government department
 - ▶ SDAB cannot issue an approval subject to appellant providing information satisfactory to another person or department



QUESTION

4. What are examples of irrelevant considerations by the SDAB?



PROCEDURAL CONSTRAINTS AND THE RULES OF NATURAL JUSTICE



GENERAL DUTY OF FAIRNESS

- ▶ Principles of administrative law apply
 - ▶ Administrative law pertains to procedural fairness and principles of natural justice
 - ▶ Governs the way members conduct themselves
- ▶ General duty of fairness relates to common law practices and legal principles to guide administrative decision makers (the rules of natural justice)
- ▶ Failure to comply, is grounds for appeal to Court of Appeal
- ▶ What are they??

GENERAL DUTY OF FAIRNESS

- Right to a public hearing
- Right to know the case to be met
- Right to have reasonable opportunity to state their case
- Right to be represented by Counsel or an Agent
- Right to question the other side and their witnesses
- Right to request an adjournment/postponement



RIGHT TO A FAIR HEARING

- ▶ Prior Determination (SDAB must be open minded)
- ▶ Disclosure of Evidence / Information
- ▶ Municipal Position (SDAB to limit interaction)
- ▶ Board Practice – respect SDAB bylaw, principles
- ▶ Right to have Decision Maker Hear Whole Case
- ▶ Right to have Decision Based on Relevant Evidence
- ▶ Must make decision based on information presented, along with legislation, statutory plans, and the land use bylaw





RULE AGAINST BIAS

- ▶ Not only justice be done, but it must be 'seen' to be done
- ▶ Cannot have actual or perceived bias for or against
- ▶ Bias is divided into three categories
 1. A strong opinion so as to produce unalterable conclusions
 2. Any pecuniary interest
 3. Personal bias – either by association, personal hostility
- ▶ SDAB must listen to appeal with an open mind and without being influenced by factors outside the evidence and arguments presented
- ▶ A perception of bias is enough to disqualify a member

TO SUMMARIZE:

SDAB decisions must meet requirements of the law and be legally defensible

"I knew you had a case darling!"



- ▶ Although any party to the appeal may not be happy with the decision, it is imperative that the parties feel that:
 - ▶ Their individual concerns have been heard,
 - ▶ They were given fair time to present their case,
 - ▶ They have been dealt with in a respectful manner, and
 - ▶ The decisions rendered are fair and just



THE APPEAL PROCESS

SAMPLE ORDER FOR PRESENTATIONS

1. Development Officer
2. Planner
3. Applicant
4. Appellant (if appellant is not the applicant)
5. Respondent (original approval authority or representative)
6. Persons supporting the appeal
7. Persons supporting the original decision
8. Other agencies, municipalities etc. (ie. school authority, utility providers etc.)



ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING



APPELLANT/RESPONDENT/PERSONS AFFECTED

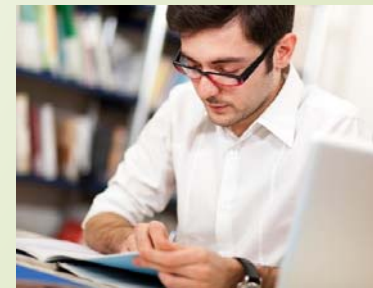
- ▶ Appellant
 - ▶ Produce evidence to support appeal, elaborating on the reasons contained within the appeal form
- ▶ Respondent (original approving authority)
 - ▶ Describe basis for original decision and steps used to come to that decision
- ▶ Applicant (if not the appellant)
 - ▶ Describe particulars of the application
- ▶ Affected Persons
 - ▶ State concerns/position on application or appeal
- ▶ SDAB Counsel
 - ▶ Provide procedural direction but must not act in a way to influence the decision of the SDAB. SDAB must conduct the hearing – not legal counsel.

*An **Agent** is any person (often a specialist ie. engineer, lawyer, planner etc) who represents another person or entity*

ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING

SDAB MEMBERS (pre-hearing)

- ▶ Be informed about legislative and quasi-judicial responsibilities
- ▶ Be familiar with statutory plans and bylaws
- ▶ Review the materials circulated before the hearing
- ▶ Must not speak with appellant or any parties involved in hearing
- ▶ Must not discuss appeal with other SDAB members or anyone else
- ▶ Must not conduct independent research
- ▶ Must not form a conclusion prior to the hearing



ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING

SDAB MEMBERS (at hearing)

- ▶ Must be aware of potential or perceived conflicts of interest
- ▶ Ask questions to determine the findings of fact or for clarification
- ▶ Should not advocate for alternate solutions or provide advice
- ▶ Hear from all parties in a fair, open and objective manner
- ▶ Do not express opinions in the hearing
- ▶ Participate in the decision making progress
- ▶ Support the decision after it is made

*Post-
public
hearing*



ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING

CHAIRPERSON

- Runs the meetings and sets the tone for the hearing
- Prevails over speaking privilege
- Prevents improper questions and behaviour and keeps pace of meeting
- Maintains order and decorum
- Conducts hearing in a fair and business like manner
- Signs decision on behalf of SDAB



ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING

SECRETARY

- Administrative type role with duties before during and after hearing
- Schedules hearing and prepares meeting package
- Ensure all referral and notice requirements are completed
- Assist with opening business of hearing
- Record minutes
- Capture the decision of the SDAB in writing
- Finalize decision in writing and send out



ROLES AND RESPONSIBILITIES OF PERSONS AT A HEARING

STAFF MEMBERS (DO, Planner, CAO etc.)

- Describe application in context of the land use bylaw, statutory plans
- Typical application requirements and particular requirements for subject application
- Date application was received and application referrals
- Nature of any pre-application meetings
- Describe subject site and site context



QUESTION

5. Who writes the decisions of the SDAB?



HEARING EVIDENCE



PRESENTATIONS

opinion

tells an attitude or judgement, cannot be proven true or false.

VS

fact

tells what actually happened, can be proven true or false.

WRITTEN SUBMISSIONS



- ▶ SDAB is required to either read out loud submissions at the hearing or acknowledges the written submissions and the SDAB read the submission in determining their findings
- ▶ Written summaries of submissions can be requested by the Chair but members are still required to review the submissions in their entirety before deliberating and rendering a decision.

TECHNICAL INFORMATION




- This type of information can be challenging – unless presented in its entirety in a manner that is understandable – the SDAB may require the services of an outside expert to provide a report to the SDAB
- If technical information the SDAB is not directly available, the SDAB may recess the hearing and request one of the parties obtain it.
- The SDAB is not bound by the formal rules of evidence. If technical evidence is presented but the author of the report is not present for questioning, that may affect the weight to be given to the evidence.

SDAB QUESTIONS

- SDAB members should use their opportunity to question all parties in the appeal.
- Questioning allows the SDAB to:
 - Clarify points
 - Gather greater detail on information presented.
 - Separate facts from opinion
- Question not Interrogate
- Do not be seen to be advocating for a party



QUESTION



6. Can the SDAB request additional information from the applicant that was not before the development authority or the subdivision authority?



COMMUNICATION SKILLS

SETTING AN APPROPRIATE TONE

- ▶ SDAB members should be cautious about becoming indifferent
- ▶ Effective communication skills will increase participants' perception of a fair hearing
- ▶ The atmosphere should reflect the principles of fairness and natural justice being practiced by SDAB members
- ▶ SDAB members must listen attentively to each individual, and portray they are doing so



What are good practices?



APPROPRIATE TONE

APPROPRIATE / GOOD

- ▶ Maintain degree of formality
- ▶ Address participants
- ▶ Pose questions through Chair
- ▶ Restrict conversation to appeal
- ▶ Use appropriate body language and tone
- ▶ Face the person
- ▶ Smile or nod
- ▶ Use eye contact

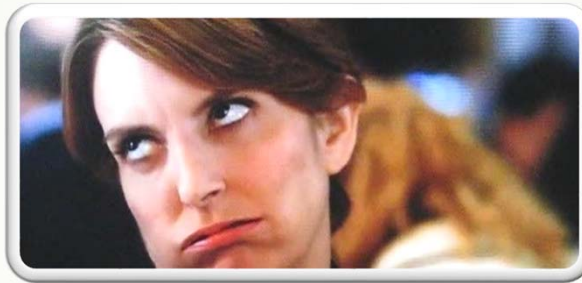
AVOID

- ▶ Avoid socializing with parties
- ▶ Avoid any gestures
- ▶ Pointing, yawning, raising eyebrows, playing with phone
- ▶ Avoid sounding sarcastic or condescending
- ▶ Avoid displaying disinterest
- ▶ Avoid interrupting

IT'S ALL ABOUT BODY LANGUAGE



Inappropriate



Inappropriate



Inappropriate

ASKING QUESTIONS



- ▶ The SDAB must often ask the right questions to get the complete information
- ▶ Once the hearing is concluded, it is too late during deliberations to ask for more information
- ▶ Asking questions helps to better clarify information, or better determine the relevance of specific portions of presentations
- ▶ Questioning of presenters can help distinguish between fact and opinion

REASONS TO ASK QUESTIONS

- Clarify the information presented;
- Assist in understanding the information presented;
- Assist a party to the appeal to present evidence;
- Show that you were listening to the evidence presented;
- Move a party along in their presentation when too much detail provided or they are repeating themselves or earlier information presented





GARBAGE IN, GARBAGE OUT

The quality of information you receive, will often be directly linked to the quality of questions asked.

1. Ask clear direction questions
2. Don't interrupt- interrupting stops their train of thought.
3. If you think you are not getting the answer, ask a follow up questions, try to direct them back to the issue or topic.
4. Dig deeper - consider using follow up questions.
5. Don't interrogate and answer the question for them.

QUESTIONS...



1. Use closed questions to get specific information
e.g. "When did you construct the addition on the building?"
2. Use more open questions to get them to explain a general situation.
e.g. "Why do you feel the municipality has not been fair in processing your application?"
3. Questions should be largely based on matters of planning and land use, legislation, and the appeal circumstances - avoid personal questions
– e.g. "How long has your spouse been unemployed?"



- Avoid rhetorical question - statements phrased in question form.
- Ask questions in a friendly and unthreatening manner.
- Do not ask accusing questions.
- Try to pose questions in a way your body language is relaxed and amicable
- Try to talk in a calm, reassuring tone, not in a raised aggressive voice (do not point finger, shrug shoulders, roll your eyes)
- Have questions prepared, write them down

HANDLING DIFFICULT SITUATIONS



Beware of changes in:

- Body language (red face, gesturing)
- Voice (raised pitch, volume)

Respond in professional manner:

- Acknowledge feelings
- Assist to focus request
- Provide clarifying information

DIFFICULT SITUATIONS



If situation gets very serious, the Chair needs to gain control

- Advise the individual destructive behavior not acceptable
- Chair to outline rules and decorum of hearing
- If it continues, advise individual they will be required to leave the hearing
- If it continues, ask the individual to leave the room
- If situation does not abate, may need to contact local police or building security

Chair may consider calling a brief recess to allow for a "cooling down" period

TO SUMMARIZE:



- Good communication skills are essential
- Effective skills ensure that all participants feel they have been heard
- Practice may be necessary to obtain good communication skills
- Listen and be attentive
- Ask questions, prepare and read material, make notes, write down questions, and ask, ask, ask questions!!

QUESTIONS

7. What are common examples of irrelevant conditions?

8. Why is it important for SDAB members and other participants to be able to ask questions of the person presenting the material to the SDAB?



MAKING AND COMMUNICATING DECISIONS

SDAB DECISIONS

SDAB is Duty Bound to Make Decision on Appeal

- Must give reasons for decision – not conclusions
- Must based decision on evidence and relevant legislation
- Methodical review of evidence:
 - Minimize chance of arbitrary decisions
 - Necessary for principle of fairness
 - Assess the questions of appeal or judicial review





GUIDING PRINCIPLES



1

Identify issue(s) subject of the appeal



2

Determine the facts



3

Review applicable legislation and planning documents



4

Understand, evaluate and weigh the evidence to make findings of fact



5

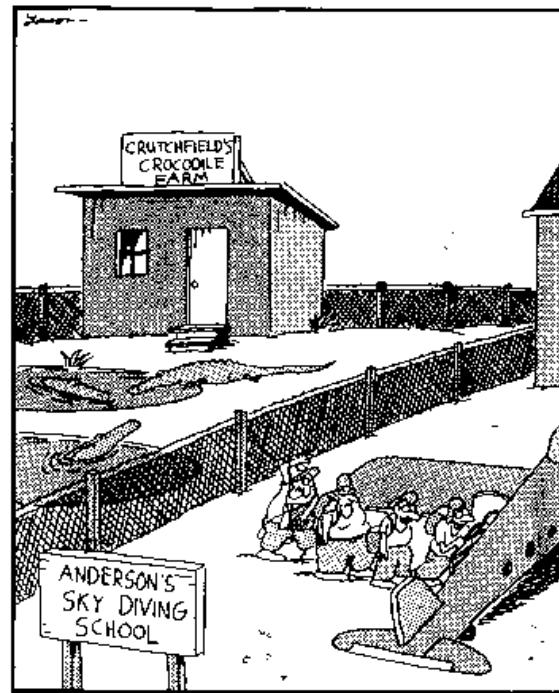
Render decision accordingly

ASSESSING AN APPEAL

Can you?



Should you?



More trouble brewing
Hosted by Cyburbia - www.cyburbia.org

Why?



CONSIDERATIONS



Legislation & Planning Instruments

- Authority of the SDAB
- SSRP
- Statutory Plans
- Land Use Bylaw
- Subdivision and Development Regulation
- Municipal Policies, Procedures, and Standards



Evidence Specific to the Appeal

- Suitability of the land for the proposed use
- Access
- Services and utilities
- Existing and future adjacent land uses
- Environmental considerations

SITE SUITABILITY SUBDIVISION

Section 7 – Subdivision and Development Regulation:

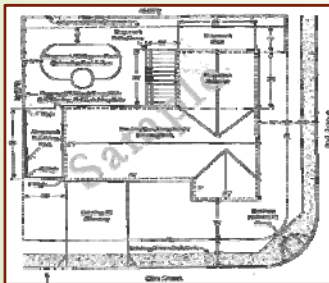
- Topography
- Soils
- Storm Water Collection and Disposal
- Potential for Flooding, Subsidence, Erosion
- Accessibility to Road
- Availability and Adequacy of water supply, sewage disposal and waste disposal
- Lot sizes and Building sites comply with Private Sewage Disposal Systems Regulation (setbacks and lot size)
- Surrounding Uses



DEVELOPMENT APPEALS

In Determining Development Appeals

- Must act in accordance with SSRP
- Must comply with any Statutory Plans – IDP, MDP, ASP, ARP
- Have regard to Subdivision and Development Regulation

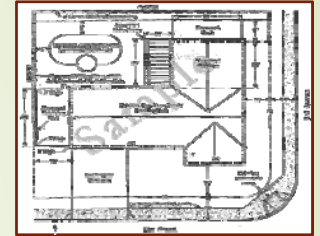


May make decision not in compliance with Land Use Bylaw, provided development:

- Does not unduly interfere with amenities of neighbourhood
- Does not materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land
- Conforms with use prescribed in Land Use Bylaw

DEVELOPMENT APPEALS

Test for Issuing Variance



1. The Board is of the opinion that Development Application No. D would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. No evidence, written or verbal, was submitted to the Municipal Planning Commission or the Board by adjacent landowners or affected persons indicating any objection or concern regarding the proposed development. Additionally, given that the location of the proposed development will result in a side setback which exceeds the minimum setback requirements of the district and the fact that the subject property is a corner lot bound to the north by Golden Street and the west by a Lane, the Board is of the opinion that the development is unlikely to impact adjacent properties or the neighbourhood in general.

STOP ORDER APPEALS



Was the order properly issued

No

Yes

Order should be
revoked

Has a breach of
land use bylaw or
development
permit occurred

Prohibited Use

Condition of Permit or
Approval

No Authority to Vary or Set
Aside Order

No Authority to Amend
Condition

May Vary Order

CONDITIONS ON A DECISION

Same ability to set conditions as Subdivision or Development Authority:

Subdivision Conditions

- Development Agreement
- Payment of Outstanding Taxes
- Municipal Reserve
- Easements, utility right of ways

Development Conditions

- Development Agreement, if authorized in Land Use Bylaw
- Any other condition authorized in Land Use Bylaw



Conditions to AVOID

- Do not sub-delegate (fetter a decision)
- Do not make subdivision contingent on a development approval and vice versa
- Proof of suitability
- Do not override a higher level of government's jurisdiction
- Conditions must be 'finite' and be able to be completed

SDAB DECISIONS



Important findings from case law :

Bowes v Edmonton, 2005 ABQB 502

- Issue of municipal negligence examined
- City should have reviewed materials in its possession and disclosed the 1977 Hardy Report to applicants
- Report would have caused a careful municipality to require a more detailed geotechnical opinion
- City should have disclosed any information in its possession related to risk of development

Sihota v Edmonton, 2013 ABCA 43

- Doctrine of “issue estoppel”
- Prevents previous decision of planning authority from being reopened during subsequent approval process
- Use was categorized, approved and established as “Professional, Financial and Office Support Services
- Development authority could not now reopen the original decision on the characterization of the use

WRITING DECISIONS



Explanation of the SDAB's Decision

1

Findings of Fact and Assumptions

2

Analysis and Reasons

3

Decision

WRITING DECISIONS

1

Findings of Fact and Assumptions

Context of the Board's decision:

- Facts according to appellant
- Facts according to respondent
- Facts preferred by the Board – i.e., relevant facts

Identify the issue(s):

- What is the Board being asked to decide

Statement of rules, statutes, policies, reports:

- What are the rules, statutes, policies, reports, etc., that were used in consideration of the appeal





1

Findings of Fact and Assumptions

1. The applicants, through DA No. 2016-XYX, are proposing a private campground offering public use recreational activities including concession booth, showers, 20 seasonal overnight RV sites, and 15 daily/multi-day RV and/or camping sites adjacent to a reservoir (Exhibit F).
2. The development was approved subject to the following conditions.
3. The development is being appealed by the adjacent landowners citing concerns with the condition of the gravel roadway and impacts to landowners due to dust generated by the additional traffic.
4. Private campgrounds and multi-day RV use is classified as a discretionary use in the Rural Recreation District.
5. Access to the proposed development is from a gravel, municipal road (Swanzey Road), which services 32 country estates lots .
6. The campground is adjacent to an existing boat launch which is also accessed from Swanzey Road.
7. The applicants submitted a TIA indicating the use will generate approximately 25 additional vehicles trips a day.
8. LUB No. X, Part 2, Rural Recreational District, section 42 states "All Recreational Vehicle Park Developments shall provide adequate dust suppression on roadways serving the development.

WRITING DECISIONS

2

Analysis and Reasons

How and why the Board reached its decision:

- What was relied upon to make decision
- Why arguments were accepted or not
- Discussion of the basis of the decision





2

Analysis and Reasons

1. The Board finds a RV Park/Campground is a discretionary use in the Rural Recreation land use district. With a RV Park/Campground in operation on the subject parcel in the past, and the location being adjacent to a reservoir where an existing boat launch and day use area are already situated on the subject parcel, the Board is of the opinion the site is suitable for a RV Park/Campground. Further, through comments received in the Exhibits, and comments made at the appeal hearing, the Board finds the appellants and adjacent landowners were not opposed to the Park itself, but were concerned about the safety and dust produced on Swanzey Road.
2. The Board recognizes the appellants' and the adjacent landowners concerns regarding the dust and safety of Swanzey Road, however the Board finds there are multiple users of the road, and are of the opinion the responsibility of dust control does not lie solely with the applicant. In consideration of what was presented, the Board felt increasing the distance of dust suppression from 1,400 metres to 1,700 metres is warranted (nearest intersection) to help mitigate the dust concerns for adjacent landowners. Additionally, a condition regarding when the dust suppression is applied will ensure the road dust is managed during the Park's operating season.

WRITING DECISIONS

3

Decision

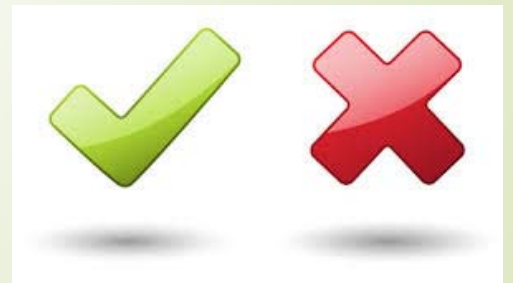
Refuse, Approve or Approve with Conditions:



Having regard to the findings of fact and having regard for statutory plans, Land Use Policies, Land Use Bylaw No. X and the Subdivision and Development Regulation, the Subdivision and Development Appeal Board makes the following decision: that **the appeal be DENIED and the Development be APPROVED subject to revised conditions.**

1. Dust control on the easterly 1,700 metres of Swanzey Road will be the responsibility of the applicant and shall be applied annually prior to the seasonal opening of the facility. Additional applications of dust control throughout the seasonal operation of the facility will be required as determined by Municipality in accordance with Dusty Policy 14.

- Clearly state conditions
- Who can determine if conditions are satisfied
- Time period for compliance with conditions




IMPLEMENTING DECISIONS

Once a decision is rendered, SDAB is *functus officio*

- No jurisdiction to deal with matter further
- Implementation/enforcement is a municipal matter
- No authority to reconsider decision or take on additional information



QUESTION



9. What is the test for varying a standard?



OTHER ISSUES

OTHER ISSUES

Explaining the Decision

- Understand and explain SDAB function and jurisdiction
- Decision is a decision of the SDAB
- Be careful not to misrepresent what the SDAB may do in a certain situation
- Every case is reviewed on its own merits in context of legislation and planning policy

Dealing with the Community

- Identify purpose of SDAB and legislative requirements
- Avoid expressing personal opinions on the matter
- Volunteer position for the betterment of the community

Dealing with the Media

- Do not discuss matter with media before or during a hearing
- May wish to establish policy regarding a spokesperson
- Do not make any statements that may affect credibility of SDAB



OTHER ISSUES



Liability for Planning Decisions

SDAB members generally will not be personally liable for actions in exercising their functions

HOWEVER

Courts have generally held municipality liable for operational decisions (policy implementation) **if approving authority acted negligently**

Test for negligence:

1. Municipality breached the duty of care it owed to that person; and
2. The loss or injury inflicted on that person was reasonably foreseen.

OTHER ISSUES



Municipal Liability

Hazard

A municipality will be liable if it creates a hazard and allows development that is compromised by the hazard

Records/Information Disclosure

A municipality will be liable if it is aware of environmental limitations and does not disclose such to stakeholders

Policy Breach

A municipality will be liable if it breaches policy on issuing approvals in high risk or environmentally sensitive lands

Sympathy to Landowner

Courts have shown sympathy to landowners who have suffered significant loss even if landowner has knowledge of the risks