

Development Appeal Board

Under the *Planning and Development Act, 2007*

Development Appeals Board

Under *The Planning and Development Act, 2007* (PDA) a municipality with a zoning bylaw is required to have a Development Appeals Board. The Board must be appointed within 90 days after the zoning bylaw comes into effect. The Board's purpose is to resolve disagreements about the administration of the zoning bylaw under the PDA. It may also deal with orders issued under *The Municipalities Act* (MA).

Board Membership

A Board is made up of no fewer than three members appointed by council, however five members is recommended. Council determines the term of office for each member of the Board, the manner in which vacancies can be filled and remuneration and expenses, if any, payable to each member. Municipal employees and members or employees of a planning commission of which the municipality is a member cannot be appointed to the Board. A member of a municipal council cannot be a Board member except in the case of a District Development Appeals Board. When a member of council is a member of a District Development Appeals Board, they shall not hear an appeal involving the municipality they represent. The PDA permits municipalities to jointly establish District Development Appeals Boards which provide more flexibility in the organization and operation of Development Appeals Boards [Sections 214 and 215]. An approving authority can determine the eligibility, number and term of office of anyone appointed to the Board. An approving authority can prescribe the procedures and any other matters to be followed by the Board [Section 26].

Board Jurisdiction

After review of a development permit application, the municipality's development officer must notify the applicant in writing of the decision made on the application, and of the right to appeal the decision. The decision, concerning either existing or proposed development, may be appealed by anyone affected by:

- a) the approval of a development permit where it is alleged the development officer misapplied the zoning bylaw in approving the proposal;
- b) the refusal of the development officer to issue a development permit because the proposal contravenes the zoning bylaw;
- c) council's approval of a discretionary use (or form of development) with development standards or conditions (Note: only the standards or conditions may be appealed);
- d) the refusal of, approval with terms and conditions of, or revocation of an approval to, an application of a minor variance;
- e) an interim development control bylaw where there is a policy plan or zoning bylaw and a permit is refused, approved with terms or development standards, or not decided within 30 days;
- f) council's refusal or failure to make a decision within 30 days of receiving a demolition permit application verified complete by the development officer;
- g) council's imposition of terms and conditions on a permit in a demolition control district or architectural control district;

- h) an order to repair or correct contraventions under a Nuisance Bylaw, Property Maintenance Bylaw and/or Zoning Bylaw adopted under sections 364 and 365 of the MA or section 242 of the PDA; or
- i) a subdivision application or servicing agreement where the council has been declared an approving authority under section 13 of the PDA.

An appeal may not be made to a Development Appeals Board where:

- a refusal is issued because a proposal contravenes the zoning bylaw land use provisions;
- a discretionary use application is refused;
- council refuses to amend a zoning bylaw or rezone land (refusal to remove the “H” – Holding designation may be appealed, as explained below); or
- a decision concerns a subdivision application if the municipal council is not designated as a subdivision approving authority under the PDA.

Starting an Appeal

Anyone starting an appeal must send written notice of appeal to the Secretary of the Development Appeals Board within:

- 30 days of a development officer’s decision being issued;
- 30 days of the failure of a council to make a decision;
- 30 days of receiving a permit with terms and conditions; or
- 15 days if appealed under the MA, or 30 days under the PDA, of an order being served to repair or correct contraventions.

A notice of appeal must be accompanied by any filing fee set by the Board. The maximum fee a Board may set is \$300.

The Board must hold a public hearing on the appeal within 30 days of receiving a notice of appeal unless the Board holds regularly scheduled meetings, in which case a hearing may be set for the first or second meeting after receipt of the notice of appeal.

Hearing Notices

At least ten days before the hearing, the Board must notify affected parties about the hearing. The notice must be served by personal service, ordinary mail, or registered mail. Affected parties include the appellant (the one initiating the appeal), the owner (if owner and appellant are not the same), the municipal council, all landowners (affected by the appeal) within 75 metres of the property, and other landowners if required by the municipal zoning bylaw.

The appellant and council must provide the Board with all material relating to the appeal at least five days before the hearing. This may include copies of the application, decision, site plans, reports, minutes, bylaws, pictures, drawings, and the zoning district map. The municipality must supply original documents or certified true copies. The Board must make all related materials available to the public for inspection prior to the commencement of the hearing.

Hearing Conduct

The hearing must be open to the public. Anyone notified of the hearing, or who may be affected by the results, must be allowed to make presentations or submissions to the Board. The Board must give fair consideration to any comments received. The Board Chair may administer oaths or affirmations to anyone making presentations.

A written record or minutes of the hearing must be made and filed for public inspection. Failure to do so may invalidate the Board's decisions. A Board member with a conflict of interest described in Subsection 2(2) of the PDA in any matter before the Board must declare the interest, take no further part in the procedures, and not vote on the matter.

Board Decisions

The Board must make a decision within 30 days of the hearing. A decision is made by a majority vote of the Board members constituting a quorum. A tie vote is a negative decision. In making a decision, the Board:

- a) is bound by the policies of the Official Community Plan;
- b) must ensure its decisions conform to the uses of land, intensity of use, and density of development in the zoning bylaw;
- c) must ensure its decisions are consistent with provincial land use policies and statements of provincial interest; and
- d) may confirm, revoke or vary the decision of the development officer, the council, or an approving authority, including any conditions attached to the decision, if in its opinion that action would not:
 - grant the applicant a special privilege inconsistent with restrictions on neighbouring properties in the same zoning district;
 - amount to a relaxation that defeats the intent and purpose of the zoning bylaw; or
 - injuriously affect the neighbouring properties.

A Board's decision cannot change a municipal zoning bylaw since the decision is limited to the circumstances affecting only a specific property.

However, similar decisions of a Board may warrant council giving consideration to amending the zoning bylaw.

The Board's decision must be in writing and signed by the Board Chair. Within ten days of its decision, the Board shall send a copy of it to affected parties who made representations at the public hearing, the appellant, the municipality, and the Director of Community Planning. A decision may be voided unless it:

- outlines the facts of the case;
- states the decision; and
- gives clear, specific reasons for the decision.

Further Appeal

The Board's decision does not take effect for 30 days from the date of the decision, and has no effect if an appeal is made to the Saskatchewan Municipal Board. All decisions of a Development Appeals Board or a District Development Appeals Board may be appealed to the Saskatchewan Municipal Board. Within 30 days of receiving a copy of the Board's decision, any party receiving the copy may send another written notice of appeal, and a \$50 filing fee to the Planning Appeals Committee of the Saskatchewan Municipal Board.

Planning Appeals Committee

The Planning Appeals Committee of the Saskatchewan Municipal Board may hear an appeal of a decision made by a Development Appeals Board. The Committee may also hold hearings in the following situations:

- a) a decision on a subdivision application that:
 - a. refused the application;
 - b. approved only part of the application;
 - c. approved the application subject to development standards; or
 - d. revoked the approval of an application.

- b) where a council has not formalized a servicing agreement within 90 days of the subdivision application being submitted to it by Community Planning, Government Relations;
- c) where a subdivision application was not decided within 90 days of the application being in complete and final form;
- d) the application of development levies or servicing agreement fees, or the factors considered in the calculation of development of them, within 30 days of a written request for payment;
- e) an objection by the subdivision applicant to produce information requested by an approving authority, other than information required by *The Subdivision Regulations, 2014* to accompany the application;
- f) in a direct control district, council's failure to approve after 60 days, plans and drawings submitted for a proposed development, or after 90 days, the terms and conditions of a related development agreement;
- g) in planning areas in the Northern Saskatchewan Administration District, a decision on a development permit application where it is alleged that the Development Officer misapplied a development control or a permit is refused because the proposal would contravene a development control;
- h) under interim development control where there is no policy plan or zoning bylaw, where a permit that is refused, approved with terms or development standards or not decided within 60 days; and
- i) a council's refusal to remove the "H" – Holding designation under a zoning bylaw. If an appeal is made to the Committee, it must hold a public hearing and may render a decision as is done by a Board. The Committee has additional power to:
 - order a zoning holding provision removed;
 - revise or issue a decision on a subdivision application; or
 - determine the terms and conditions of a servicing agreement.

The Committee's decisions are final unless a party of the appeal, within 30 days of the decision, submits a stated case on a point of law or jurisdiction to the provincial Court of Appeal.

The Committee's address is:

Planning Appeals Committee
Saskatchewan Municipal Board, 4th Floor
Room 480, 2151 Scarth Street
REGINA SK S4P 2H8

For more information contact the Saskatchewan Municipal Board, Planning Appeals Committee at (306) 787-6221 or visit the website (http://www.smb.gov.sk.ca/planning_appeals.htm)

Contact Information

For more information, please visit www.saskatchewan.ca or contact Community Planning, Saskatchewan Ministry of Government Relations.

Southern Region

Saskatchewan Ministry of Government Relations
Community Planning
420 – 1855 Victoria Avenue
REGINA SK S4P 3T2
Telephone: (306) 787-2725
Fax: (306) 798-0194

Central and Northern Regions

Saskatchewan Ministry of Government Relations
Community Planning
Room 978, 122 3rd Avenue N
SASKATOON SK S7K 2H6
Telephone: (306) 933-6937
Fax: (306) 933-7720